

1503 PETITION: ISRAEL

LARGE-SCALE EXPROPRIATION OF PALESTINIAN PROPERTY IN ISRAEL

I. INTRODUCTION

- 1.1 This Petition is brought under ECOSOC Resolution 1503 by BADIL Resource Center for Palestinian Residency and Refugee Rights (BADIL) and the Center on Housing Rights and Evictions (COHRE) on behalf of individuals and groups of Palestinian owners of land expropriated by Israel in violation of international law. BADIL, based in Bethlehem, Palestine and COHRE, based in Geneva, are independent non-governmental organizations. COHRE is mandated to promote and protect housing rights throughout the world, and BADIL is mandated to promote protection and rights-based durable solutions for Palestinian refugees. Both organizations' programmatic work seeks the enforcement and application of internationally recognized human rights.
- 1.2 The named Petitioners here are: The Committee of the Uprooted Residents of Kafr Bir'im (hereinafter "CUB"), and Abdullah Asad Shibli and two other landholders in the area known today as Shibli, Israel. CUB is an organization representing the former residents of a now destroyed Palestinian Christian village located near the Israel-Lebanon border. CUB was established in 1987 with the mission of returning the former residents of Kafr Bir'im to their lands and to obtaining restitution of all their property wrongfully confiscated by Israel. Abdullah Asad Shibli and the two other landholders are members of a Bedouin tribe, Arab As-Subieh, who currently reside with other members of their tribe in the village of Shibli located at the foot of Mt. Tabor near Lake Tiberias in Israel. They held property in the area surrounding Shibli before the creation of the State of Israel and for some time thereafter. Since 1948, however, the Israeli government has engaged in a process of gradually confiscating lands owned by the Bedouins of Arab As-Subieh including lands belonging to Abdullah Asad Shibli and the two other landholders. Once confiscated, the Bedouin lands are nationalized and turned over for settlement and development restricted to persons of Jewish origin.
- 1.3 Petitioners here approach the Human Rights Council as a forum of last resort to obtain a fair hearing and authoritative legal conclusions about their property rights under international law, because – although citizens of Israel - they cannot obtain an adequate, fair and effective remedy for the wrongful takings under Israel's domestic law. Land confiscation continues in the case of Shibli, and the ongoing denial of the right to restitution of the people of Kafr Bir'im creates new generations of internally displaced people and refugees. The continuing violation of the Petitioners' rights to their land under international law incurs cumulative damage and threatens the survival of their families and communities.
- 1.4 The petition brought forward here is also a matter of urgency, because:

- i) Petitioners' rights to remain and reside on their land is threatened by an Israeli government plan aimed at expropriating large tracts of Palestinian land in the Naqab (also known as the Negev) and the Galilee with the declared objective of boosting the Jewish population in these areas by 2015. Human Rights organizations have warned that the plan is not based on the principles of equality and justice in resource allocation and discriminates against Palestinian citizens of Israel. On 1 February 2007 for instance, about 50 houses belonging to the family of Tarabin El-Sane'e living near a Jewish town were destroyed by the Interior Ministry and the police in the Naqab. (See for instance Weekly Review of the Arab Association for Human Rights available at: <http://www.arabhra.org>).

II. THE PETITION IS ADMISSIBLE

The Petition fulfills the criteria of Resolution 2000/3 of the Economic and Social Council, and is admissible under the Commission's 1503 procedure.

Petition is not anonymous

- 2.1 Petitioners CUB and Abdullah Asad Shibli and the two other landholders have identified themselves as being the victims of alleged violations by the State of Israel of human rights and humanitarian law which directly affect their respective families and communities numbering some 5,500 persons. The violations alleged by the named petitioners alone meet the admissibility requirements for the 1503 procedure.

Facts are credible and reliably attested

- 2.2 Petitioners have direct and reliable knowledge of the violations alleged. Their testimony about the factual background for and the record of their cases as litigated through the Israeli courts is attached as Annex 1 & 2, which form an integral part of this petition. Their testimony of confiscation and destruction of Palestinian housing and property within Israeli territory is corroborated by reports from Special Rapporteurs (E/CN.4/2003/5/Add.1, 12 June 2002; Pinheiro (E/CN.4/Sub.2/2004/22/Add.1); Concluding Observations of UN Human Rights Treaty Bodies (CERD/C/304/Add.45, 30 March 1998; CCPR/C/79/Add.93, 18 August 1998; E/C.12/1/Add.27, 4 December 1998; E/C.12/1/Add.69, 31 August 2001; E/C.12/1/Add.90, 23 May 2003) and the works of independent legal scholars. The expert testimony of the lawyer who has handled the case of Asad Abdullah Shibli as well as dozens of similar cases is attached as Annex 3. The scholarly research findings of independent experts on Israeli land law policy in the context of Israel's expropriation scheme are included as Exhibits in Annex 3. Moreover, human rights organizations, as well as various Israeli governmental bodies created to facilitate and legalize the expropriation of Palestinian Arab land including the Custodian of Absentees' Property (CAP) and the Development Authority, have fully documented these land expropriations. Although in many cases, Palestinian property records were lost or destroyed, the United Nations Conciliation Commission for Palestine (UNCCP) has reconstructed a land registration database of some 1.5 million Palestinian holdings

against which the records of CAP and the Development Authority may be compared. Furthermore, the Israeli courts and government bodies who opposed petitioners in Israeli courts have not contested the petitioners' contentions of property confiscation and destruction, but only the legality of these acts. The Commission should have no difficulty in finding the facts alleged by petitioners to be credible and reliably attested.

Petitioners' allegations of property destruction and confiscation by the Israeli government demonstrate a prima facie case of a consistent pattern of gross and reliably attested violations of human rights and humanitarian law

- 2.3 Petitioners have described incidents of property confiscation and destruction by Israel which have resulted in the cumulative loss of over 30,000 dunams (30 km²) of land and in forced displacement of some 5,000 persons. The duration of the violations (over fifty years and continuing today), the amount of land confiscated, the number of people directly affected, and the state of Israel's refusal to provide adequate relief to the victims characterize these violations as gross. The fact that petitioners' cases are also representative of dozens of similar cases published in the records of the Israeli Supreme Court and documented by local and international human rights organizations (see paragraphs 4.4 – 4.13 below) and of a large group of unnamed victims -- original Palestinian landholders dispossessed since 1948 and their descendants-- as well as the resulting statelessness into which many displaced Palestinians are forced, are additional indicators of the existence of a consistent pattern of gross violations of human rights and humanitarian law.
- 2.4 Israel has proffered various justifications for its land confiscations including military necessity, abandonment of property, failure to register title, and public need. Petitioners show that these defenses, analyzed in detail along with the substantive legal violations, are insufficient to preclude a finding of a consistent pattern of gross and reliably attested violations of human rights and humanitarian law.

Domestic remedies have been exhausted and/or shown to be ineffective

- 2.5 Petitioners will also show that they have engaged in a legal struggle with the State of Israel since its establishment to retain their land, including hearings of their cases by the Israeli Supreme Court. Additional efforts for domestic remedy by the Kafr Bir'im displaced are foreclosed by the 2003 decision of the Supreme Court in the case of *Iqrit (Sbait et al. v. State of Israel, HC 840/97, 2003)*. In this decision, the Supreme Court accepted the government's position that members of the internally displaced Palestinian community who are also citizens of Israel should not be allowed to return to their lands and homes inside Israel and should not be provided restitution of their properties because this would set a legal precedent for millions of Palestinian refugees whose claims are to be resolved in future political negotiations. Hundreds of other cases of land expropriations appealed to the Israeli Supreme Court with similar factual bases as the Petitioners' cases have also been unsuccessful because restitution of Palestinian property is effectively precluded by Israel's current legal regime. (For findings of relevant research, see Annex 3.) Despite the former villagers' repeated efforts to return to their lands and to obtain restitution of their properties, the Israeli government, including the executive, the legislative and the judicial branches, has

failed to provide an adequate, fair and effective remedy for the wrongs suffered by the former villagers. Domestic legal remedies are, moreover, ineffective with regard to most other pre-1948 Palestinian property owners who, as refugees, have no standing in Israel's courts.

2.6 In addition to challenges made before the Israeli Supreme Court, CUB has also sought review and an effective remedy before Knesset Committees and a specially created governmental ministerial committee. These efforts were also to no avail, although in 1994 -1995 CUB had submitted a series of concrete proposals for how the restitution of the land of the Kafr Bir'im displaced could be affected without harming the well-being of the small number of Jewish settlers currently living on Kafr Bir'im land.

2.7 The Commission should find that the petitioners have made extensive and good faith efforts to regain their lands by complying with Israeli land laws and challenging land expropriations in the Israeli court system, without obtaining fair, adequate and effective remedies.

No petitions pending under other complaint mechanisms

2.8 As described above, petitioners have exhausted all domestic remedies. Petitioners also have not submitted a petition under any other complaint mechanisms of the United Nations and its specialized bodies, nor do petitioners have claims pending under other mechanisms with jurisdiction over Israel. Moreover, no other similar petition is currently pending with the United Nations on the subject matter of this petition, i.e. large scale expropriation of Palestinian property in Israel. Having limited their request for redress of the alleged violations to this Commission's 1503 procedure, the Commission should find their petition admissible.

Petition's purpose is not politically motivated or counter to the purpose of the Charter of the United Nations

2.9 Petitioners' claims are not politically motivated. The purpose of Petitioners' claims is to determine the rights and remedies under international law of former Palestinian Arab owners and possessors of housing and property who were living in the territory which became the State of Israel in 1948, whose housing and property were subsequently – and continue to be - expropriated, confiscated, or destroyed by the State of Israel. Although Palestinians should have the same rights as all other human beings to housing and property, the petitioners as internally displaced persons and members of a discriminated minority in Israel (see Concluding Observations of the Human Rights Treaty Bodies listed in paragraph 2.2 above), and as refugees and stateless persons, lack a state willing or able to guarantee such rights. They also lack an international protection mechanism or entity that can guarantee such rights in the absence of the state responsible to do so. Israel's refusal to guarantee such rights is manifest in the gross violations complained of here, to which the Israeli legal system has been complicit. The Council should find the petitioners' purpose is not politically motivated, but consistent with the objective and fundamental principles of the United Nations Charter.

III. BACKGROUND TO PROPERTY EXPROPRIATION IN ISRAEL, AND CONSEQUENCES TO PETITIONERS

3.1 Petitioner, Committee of the Uprooted Residents of Kafr Bir'im ("CUB"): Expropriations "legalized" under the following Israeli laws and regulations:

Emergency Regulations

- Article 125 of the Defense (Emergency) Regulations of 1945,
- Emergency Regulations (Security Zones) of 1949, and other Emergency Regulations
- Land Acquisition (Validation of Acts and Compensation) Law 1953

Using emergency regulations, the military government apparatus and legislation passed by the Knesset to legalize extra-legal actions taken by the Israeli military, Israel wrongfully evacuated the Palestinian inhabitants from their village of Kafr Bir'im in 1948. In 1951, Israel destroyed their homes and property, well after the armed conflict between Israel and Arab states had ceased. Israel then confiscated the land of Kafr Bir'im in 1953 and turned it over to Jewish settlements. Until today, vast areas of the land are used by Jewish settlements for grazing a small number of cattle. A smaller part of the land is currently used as a nature reserve and a national park maintained by the state and para-state organizations (e.g. Jewish National Fund).

Land expropriation under various provisions of Israel's land scheme has had dire consequences for the named Petitioners, their descendants and their communities. In the case of Kafr Bir'im, the villagers lost not only land constituting over 12,000 dunams (12 km²), their homes, use of their agricultural and grazing land as the sole means of many of the inhabitants livelihoods, but they also lost an entire community of relationships when they were evacuated and their village was destroyed. The villagers of Kafr Bir'im relied on their community to preserve their history, identity, and cultural heritage as Palestinian Christians in Palestine. Today, when the former villagers and their descendants try to maintain their connection to their village by worshiping on holidays and occasions at the village church and by burying their dead in the village graveyard, they are forced to pass a sign claiming that the site was once a Jewish village, negating the villagers' history, identity, and cultural heritage. Today, the former residents of Kafr Bir'im and their descendants number around 2500 persons. They continue to live as internally displaced persons in Israel and as refugees in Lebanon and elsewhere. Many of the villagers and their descendants are forced to live in the homes and on the property of other refugees knowing that the price of their staying on the land of their ancestors is being paid by their former neighbors who fled the fighting in 1948. Additional efforts for domestic legal remedy are foreclosed by the 2003 decision of the Supreme Court in the case of Iqrit (see above, point 2.5). A more detailed description of the facts and background of this case is provided in the Affidavit of Afif Ibrahim Abdalla, Secretary of the CUB, included as Annex 1. For legal analysis of Israel's laws applied to this case, see below, Section IV.

3.2 Petitioners Abdullah Asad Shibli, Mahmud Ahmed Oakley, Ahmed Olaik Shibli, and other members of the Bedouin tribe of Arab As-Subieh residing in Shibli, Israel:

Expropriations “legalized under the following Israeli laws:

Settlement of Title Operations and Land Registration

- The Law of Limitation 1958
- Basic Law—Israel Lands 1960
- Israel Land Law 1969
- Land (Acquisition for Public Purposes) Ordinance of 1943
- Land Acquisition (Validation of Acts and Compensation) Law 1953

In the case of Asad Abdullah Shibli, the two other landholders, and the former Bedouin tribal community of Arab As-Subieh, the tribe went from owning/holding and using over 18,000 dunams (18 km²) of land, to being forced to live on small parcels on a strip of land at the foot of Mt. Tabor, now known as the village of Shibli. The community, today consisting of some 3,000 persons, has suffered from the inability to work their lands or graze their livestock. Some of its members do not even own the land on which they built homes. The community has been forced to change its way of life to the detriment of their history, identity, and cultural heritage. Land belonging to the Bedouin of tribe of Arab As-Subieh continues to be confiscated today through the use of other legal mechanisms including Israel's Land (Acquisition for Public Purposes) Ordinance 1943, and the economic and social survival of the community is threatened.

While their rights to hold and use their land would have been protected under the Ottoman Land Code and were respected by the British Mandate authorities, the State of Israel forced the evacuation of the tribe of Arab As-Subieh from most of its lands leaving them with only a strip of land hugging the foot of Mt. Tabor, known today as the village of Shibli, to build homes and for agricultural use. Some of the property of the tribe Arab As-Subieh was confiscated under the Absentees' Property Law after some members of the tribe fled from hostilities during the Arab-Israeli War of 1948. In the early to mid-1980s, the Israeli government then instituted land settlement operations in the area of including and surrounding the area known today as the village of Shibli knowing well that most Bedouins in Israel had never registered individual title to their property that they held and cultivated. These operations resulted in the further dispossession of the Bedouin of Arab As-Subieh including the confiscation of property belonging to Abdullah Asad Shibli and two other landholders which had been held and cultivated by them and their families for generations. A more detailed description of the facts and background of this case is provided in the Affidavit of Abdullah Asad Shibli included as Annex 2 to this petition. For legal analysis of Israel's laws applied to this case, see below, Section IV.

- 3.3 General Background: In the 9 districts of Mandate Palestine that were incorporated into Israel, 77 percent of the Palestinian villages were destroyed. Of the five districts partially incorporated into Israel, 74 percent of the villages were destroyed. In addition to the outright destruction, Israel destroyed and expropriated Palestinian housing and property through a number of legal measures enacted by the Israeli government. By

the end of 1948, within the state of Israel, approximately 70 per cent of Palestinian-owned land had been seized, 65 per cent of Palestinian housing had been destroyed, and 32 per cent of the remaining Palestinian housing was expropriated by the State of Israel for the benefit of its Jewish population. The UNCCP estimated that, as of September 1950, 73,000 Palestinian houses and 7,800 premises, such as warehouses, workshops and offices, had come under the control of the Israeli Custodian of Absentee Property. By 1967, an estimated 150,000 homes had been expropriated from Palestinians. (Terry Rempel: "Housing and Property Restitution, The Palestinian Case", in: *Returning Home, Housing and Property Restitution Rights of Refugees and Displaced Persons*; edited by Scott Leckie; Transnational Publishers, 2003; p.275 – 317). Following the 1948 war, Israel was in control of 20,600 km² of land, but the state and private Jewish owners had legal title to no more than 2,800 km². The State of Israel, by means of its land regime, subsequently expropriated and confiscated some 17,000 km² of land mostly owned by Palestinian Arabs. By 2001, it was estimated that Israel had confiscated almost 80 percent of the land owned by Palestinians in Israeli territory. (See also the Affidavit of Hussein Abu Hussein attached as Annex 3 to this petition for more details on these data as well as analysis of Israel's land laws directly relevant to the Petitioners' cases.)

IV. ISRAEL'S SCHEME OF LAND EXPROPRIATION, DESTRUCTION OF PETITIONERS' PROPERTY AND HOUSING CONSTITUTE A CONSISTENT PATTERN OF GROSS VIOLATIONS OF INTERNATIONAL LAW FROM 1948 TO THIS DAY

Israel's continuing expropriation and destruction of petitioners' property and housing violate Israel's obligations under binding human rights and humanitarian law treaties

- 4.1 The acts of the State of Israel in expropriating Palestinian property are governed by international law and their legality is not affected by their characterization under Israeli domestic law. As a member of the United Nations, Israel is obligated to uphold certain inalienable rights and freedoms of all human beings as embodied in the Universal Declaration on Human Rights ("UDHR"). Furthermore, Israel has ratified the International Covenant on Economic, Social, and Cultural Rights ("CESCR"), the International Covenant on Civil and Political Rights ("CCPR"), the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), the Convention on the Rights of the Child ("CRC"), the Convention Relating to the Status of Refugees ("1951 Refugee Convention"), and the Convention Relating to the Status of Stateless Persons ("1954 Statelessness Convention"). As noted above, Israel is also a party to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV), which applies in times of armed conflict and was applicable as a matter of customary law to Israel's land expropriations during the state of hostilities.

- 4.2 Having ratified these treaties, Israel is bound to uphold and respect their provisions with regard to all persons, regardless of their nationality. Concerning its accession to the human rights treaties, the only reservation Israel has made relating to property and housing rights is to Article 16 of CEDAW regarding the equality of men and women as to, *inter alia*, property rights. Israel has expressed its reservation only so far as the Israeli laws governing certain religious communities conflicts with Article 16. Although

Israel has maintained a state of emergency since 1948 and declared a state of emergency under Article 4(1) of the CCPR, the only article from which it claims to have derogated is that of Article 9 of the CCPR, not relevant to our discussion here. Israel's declaration of a state of emergency does not meet the tests required by Art. 4(1) of the CCPR, in that the state of 'emergency' is permanent, the emergency is not immediate so as to justify use of the emergency measures taken, and the measures themselves are not proportional to the emergency. The main purpose of such actions, and the reasons that Israel has failed to remedy the actions, is solely to discriminate against non-Jewish constituencies of the State of Israel concerning their property rights. As such, all derogations for a 'state of emergency' have been used for an improper discriminatory purpose under Article 4(1).

The discriminatory purpose and effect of Israel's land expropriation and destruction violate its treaty obligations

- 4.3 The treaties to which Israel is a party explicitly forbid discrimination on the basis of race, nationality, religion, and the discriminatory protection of rights. The CERD, Article 5, prohibits racial discrimination and guarantees equality before the law as to (a) the right to equal treatment before tribunals, (d)(i) the right to freedom of residence within a state, (d)(ii) the right to leave and return to one's country, (d)(v) the right to own property alone as well as in association with others, (d)(vi) the right to inherit, and (e) the right to housing. Furthermore, the UDHR Article 7, CCPR Article 2(1), and CESCR Article 2(2), which protect the right to housing, all guarantee the nondiscriminatory protection of rights enshrined in those conventions. More generally, CERD Article 1(3) forbids any nationality-based discrimination. Such discrimination is also forbidden under Geneva IV, Article 33 (see below, point 4.17).
- 4.4 Israel's Emergency Regulations have been used to expel Arabs from their property, to close their property and the surrounding area off for "security reasons," and then to subsequently declare the same property "abandoned" or "uncultivated," thus permitting confiscation by the state. The series of attempts in court by the Arab villagers of Iqrit and Kafr Bir'im (HC 64/51, HC 195/51, HC 141/81, HC 840/97) to regain their land demonstrates that the government and the Israeli Supreme Court will take numerous measures to thwart valid legal challenges to expropriations based on security concerns that no longer exist. These emergency regulations have never been used to evacuate Jewish communities and expropriate their property.
- 4.5 Israel's Absentees' Property Law has been used to confiscate property belonging to citizens at war with Israel or Palestinian Arabs who stayed, even for short period of time, in territory controlled by such states. The law applies from 29 November 1947 (UNGAR 181 Palestine Partition Resolution) until the day the State of Emergency will be lifted by Israel. Such persons are declared "absentees", and their property is designated "absentee property" and transferred to the Custodian of Absentee Property (CAP), usually without notification of this designation to the property holders. The CAP is authorized to sell and transfer absentee property only to the Development Authority (DA), the state agency established by the Israeli government in conjunction with the enactment of the Absentees' Property Law to "legalize" the confiscation. When an absentee designation is challenged in court, regardless of whether the technical

requirements of the law are met, the transfer of ownership by the CAP to the DA is deemed made in good faith and irrevocable. There are no exceptions for involuntary abandonment or inheritance, unless the property belongs to a Jew. Private Jewish property is not confiscated under this law. Israel has not ended the State of Emergency and the law is applied until today.

4.6 Part of the lands of Arab As-Subeih (e.g. *CAP and Development Authority v. S. Shredi and Saleh M. Shibli*, HC 463/89 decided on 2-10-1991) and the lands of Al Jish where many of the villagers of Kafr Bir'im were resettled against their wish, were confiscated under the Absentees' Property Law. Numerous additional cases of confiscation under the Absentees' Property Law are on file with human rights organizations and lawyers, including: *Muhammad Habab v. CAP*, HC 54/58; *CAP and DA v. Heirs of Toraiya A. Mousa*, HC 3747/90 decided on 28-7-1992; *Hussein A. Diab v. CAP and DA*, HC 1397/90 decided on 28-12-1992; *Hassan S. Darwish v. CAP, DA, et al.*, HC 415/89 decided on 26-10-1993; and, *Mikora Farm Ltd v. Ali Younes*, HC 109/87 decided on 29-9-1993. To the best of our knowledge, no Palestinian property owner has ever challenged this law successfully and regained ownership, with the exception of special cases not relevant for this petition. Even limited Palestinian claims, brought under the 1991 Basic Law: Human Dignity and Freedom, for equal access and use of land confiscated under the Absentees' Property Law have resulted only in very partial success (e.g. *Qa'adan and ACRI vs DA*, 1995). For more detailed legal analysis of Israel's Absentees' Property Law see Annex 3, Affidavit of Hussein Abu Hussein and relevant Exhibits.

4.7 Israel's laws and operations pertaining to land registration and settlement of title, including the Law of Limitation 1958, and Basic Law – Israel Lands 1960, were and continue to be used to confiscate the lands of Palestinian Arabs who lawfully held land based on prescription under the Ottoman Land Code. To make it virtually impossible to register title on the basis of prescriptive rights, Israel lengthened the holding and cultivation period contained in the Ottoman Land Law of 1858 from 10 to 15 years for unsettled land and from 15 to 25 years for settled land. The lengthening of the period of prescription was then applied retroactively so that vested rights of Palestinian landholders were effectively canceled. Israel then froze the counting of time towards the period for prescription for five years, and announced in the most densely populated Palestinian areas where Palestinians had not registered title, that it would begin settlement of title and land registration operations there. The announcement of settlement of title operations tolled the time for acquisition of title by prescription – in that no more time could be counted to accrue prescription rights - and opened the door for Israel to confiscate more Palestinian land. Even in the unusual case when a Palestinian Arab was somehow able to prove holding and cultivation for the requisite prescription period, the Israeli Supreme Court interpreted the land laws in restrictive ways in favor of state ownership and created procedural barriers and standards that were exceedingly difficult for Palestinian landholders to meet. Finally, the ability of Palestinian Arabs to claim title by prescription in settled land was abolished altogether after the Israeli Supreme Court interpreted Israel's Basic Law—Israel Lands to prohibit such acquisition of title in lands deemed to belong to the state.

4.8 Petitioner Abdullah Asad Shibli is directly affected by these laws (*The State of Israel v. Abdullah As'ad Shibli*, HC 520/89 decided on 6 March 1992). Also affected are

numerous other residents of Arab al-Shibli and other Palestinian landowners, in particular Palestinian Bedouin, including: *Salim Al al-Hawashli et al. v. State of Israel*, HC 218/74 decided on 15-5-1984; *Ahmad Y. Saleh v. State of Israel*, HC 149/81 decided on 2-9-1984; *Shabeeb Hamzeh v. State of Israel*, HC 265/83 decided on 6-11-1985; *Muhammad A. Al-Wakeli et al. v. The State of Israel, DA and ILA*, HC 84/83 decided between 28-2 and 6-10-1983; *State of Israel v. Heirs of Abdullah M. Rahal*, HC 265/83 decided on 16-10-1986; *Abu Sulub Bedouin v. ILA*, HC 518/86, and others. Current Israeli land settlement operations, in particular in the Naqab/Negev, involve ongoing expropriations of yet more Palestinian land under cover of prescription laws. Private Jewish land owners are not affected by these laws and operations, because they cannot usually claim title based on prescription. For more detailed legal analysis and findings, see Annex 3. Affidavit of Hussein Abu Hussein and relevant Exhibits.

- 4.9 Israel continues to employ the Land (Acquisition for Public Purposes) Ordinance 1943 to confiscate strategically important land owned by Palestinian landowners in order to further Jewish development, housing, and use. The Israeli Supreme Court has given the government wide latitude in the application of the Public Purpose Ordinance and has shown almost complete deference to the government determinations of what, where and when to confiscate property. In practice, this has meant that the government may expropriate Arab land solely for Jewish settlement so long as it claims that the confiscation is for a "public purpose." Examples of the dispossession under these laws include the Palestinian town of Nazareth (*Committee for Defense of the Confiscated Land of Nazareth a.o. vs The Minister of Finance a.o.*, HC 30/55 decided on 22-7-1955) and numerous others, such as: *Fatmeh H. Gara vs DA*, HC 816/81 decided on 21-1 and 21-3-1985; *Makhoul vs The Minister of Finance*, HC 2739/95 decided on 12-3-1996; and, *Mazen H. Z. Nusseibeh v. The Minister of Finance*, HC 4466/94 decided on 12-11-1995. Confiscation for public purpose has affected only a small number of Jewish property owners, because private ownership of land by Jewish individuals is rare in Israel. For more detailed legal analysis and findings, see Annex 3. Affidavit of Hussein Abu Hussein and attached Exhibits.

The arbitrariness of Israel's land expropriations and destruction violates treaty obligations

- 4.10 The treaties to which Israel is a party forbid arbitrary interference with the home and property. Article 17 of the UDHR obligates Israel to protect the right to own property, individually and in association with others, and not to arbitrarily deprive anyone of his or her property. Article 17(1) of the CCPR and Article 16(1) of the CRC likewise protect against arbitrary interference with the home. Although parties may derogate from these articles during times of emergency threatening the life of the nation, derogations may not involve discrimination.
- 4.11 Often when Israel confiscated land and other property under the Public Purpose Ordinance, as in the case of Nazareth, there was other land available for the alleged public purpose. Instead of expropriating other available land, Israeli officials expropriated Arab land. Such expropriations were arbitrary, if not discriminatory. Nor have expropriations and property destruction met the limits of necessity required by both the CCPR's derogation principle and Geneva IV. If Israeli officials closed off an area of land, confiscated property, or expelled residents on the basis of legitimate

security concerns, Israeli officials should have returned that property and housing to former Arab residents as soon as those security concerns ceased to exist. The experience of the Kafr Bir'im villagers shows that even after the state declassified a 'security zone', such declassification has never involved restitution of the land to its legitimate former owners. Rather, Israel confiscated Palestinian land on the pretext of public purpose or necessity, and then turned it over for Jewish settlement or related use. Thus, since the confiscations and destruction were arbitrary to accomplish a discriminatory purpose, they are prohibited under the treaties discussed here.

Israel's expropriations and destruction of property and its subsequent failure to provide restitution, compensation, and/or alternative housing and property violate its treaty obligations to recognize the right of all persons to adequate standards of living and housing.

4.12 The treaties to which Israel is a party obligate states to recognize the right of all persons to an adequate standard of living for that person and for his or her family, including the right to adequate housing and to the continuous improvement of living conditions. These obligations are embodied in UDHR Article 25 and CESCR Article 11(1). CEDAW Article 14(2)(h) and CRC Article 27(3) place a higher burden on the state not only to recognize but also to strive to ensure these rights for women and children. The Sub-Commission on the Protection and Promotion of Human Rights recently reaffirmed the universal applicability of the right to adequate housing, particularly for returning refugees and displaced persons. The Sub-Commission also confirmed that laws of abandonment were a serious impediment to the right of return and reintegration of refugees and internally displaced persons. Although the treaties recognize that states may have limited financial ability to provide for these rights, they require a good faith effort at providing the highest attainable standards and prohibit degradation of housing and other living conditions.

4.13 Together, the four types of Israeli land laws and the rulings of the Israeli Supreme Court have denied Palestinian Arabs the right to housing, property ownership, freedom of residence, and inheritance. Land expropriated from Palestinian owners was transformed into "Israel Land" under Israel's Basic Law (1960). Such land is owned and held by the state (Development Authority, Israel Land Administration, and others) and para-state (World Zionist Organizations, Jewish National Fund and their affiliates) agencies which, under their statutes, hold and develop land for the exclusive benefit of the Jewish people. No similar laws and agencies operate to protect Palestinian property ownership, or to hold and develop land for Palestinian Arabs. In the war of 1948, Israel gained control of over 20.6 million dunums (20,600 km²) of land in former Palestine, however the State and private Jewish owners combined had legal title to no more than 2,800 km². Since then, the State of Israel has expropriated some 1,288,000 dunums (1,288 km²) of Palestinian land by means of the combined application of emergency regulations and the Land Acquisition (Validation of Acts and Compensation) Law. Application of the Absentees' Property Law resulted in the expropriation of an additional four to five million dunams (4,000 – 5,000 km²). The Land Acquisition for Public Purpose Ordinance, as per the ILA's 1993 report, resulted in the expropriation of 1.85 million dunams (1,850 km²) of privately held land, the major part of which was taken from Palestinians. Following land settlement of title and registration operations, Palestinian Arabs are left with only approximately 3 per cent

(600 – 700 km²) of the land in Israel. Israel's land regime thus constitutes a violation of the Palestinian people's right to self-determination. Acts of arbitrary interference in individual Palestinian Arab housing and property rights has moreover resulted in nationality-, race-, and religiously-based discrimination. By expelling Petitioners from their land and expropriating and destroying their housing and property, Israel has also infringed upon the petitioners' rights to housing. Cutting off access to petitioners' fields and other sources of their livelihood has deprived them of their means of survival and severely diminished their standards of living. Furthermore, Israel has not offered fair, adequate and effective restitution and compensation. Israel's land regime and policies thus constitute egregious violations of its treaty obligations.

Israel's expropriations and destruction of housing and property have unlawfully created one of the world's largest populations of refugees and stateless persons in contravention of Israel's treaty obligations.

4.14 Palestinians as refugees, stateless persons and internally displaced persons should be protected under all applicable human rights standards and instruments; however, the prevalent interpretations of the so-called 'exclusion clauses' in the 1951 Refugee Convention, the UNHCR Statute, and the 1954 Convention on Stateless Persons have effectively excluded Palestinians from many of the essential protections of those conventions. Nevertheless, the object and purpose of these Conventions is to alleviate the plight of refugees and stateless persons, to allow them to enjoy fundamental rights and freedoms without discrimination, and to prevent the social and humanitarian problems surrounding refugees and stateless persons from becoming a source of tension between states. Israel's expropriations and destruction of petitioners' housing and property have been the main cause of, and continue to contribute substantially to the creation and continued plight of millions of Palestinian refugees and stateless persons in contravention of the spirit and purpose of the 1951 Refugee Convention and 1954 Convention on the Status of Stateless Persons.

Israel's expropriation and destruction of petitioners' property and housing violated Israel's obligations under customary international law from the date they commenced.

4.15 Israel's taking of Palestinian land was a matter governed by customary international law, *ab initio*. The principles underlying the illegality of Israel's expropriation of Palestinian land as a matter of customary law, and the concomitant Palestinian rights to reparations for wrongful taking, have only strengthened over time as the key customary norms have been codified in treaties that Israel has signed and ratified. By 1948, there was no doubt that forced expulsion was prohibited as a war crime. (Charter of the International Military Tribunal, IMT, Aug., 1945). Aside from forced expulsion, customary law also prohibited preventing return of refugees, and the taking or destruction of refugee property. The Hague Regulations, which established customary principles long before 1948, defined such taking or destruction as "pillage". The norm of non-discrimination in nationality rights, rights to return to one's country and housing rights were also clearly established prior to 1948. The international humanitarian law, law of state succession/nationality law and the human rights law principles underpinning the right of return and the related rights to property restitution of refugees were accepted, undertaken, and enforced by states and the international

community well prior to the Palestinian refugee crisis. Thus, UN General Assembly Resolution 194(III), the key Resolution affirming these rights for Palestinian refugees, was based firmly on state obligation, *opinio juris* and state practice that had made these binding norms by the time UNGAR 194 was passed.

In the early period of state-building, Israel violated the prohibition on forced expulsion, and the principles of state succession and non-discrimination by its discriminatory application of housing and property rights

- 4.16 International practice, usually enforced by peace agreements, is to allow inhabitants of a territory at the time of change in sovereignty to acquire the nationality, and thereby the protection, of the successor state. This was the practice in the breakup of the former Soviet Union and former Yugoslavia. Furthermore, denationalization based on race or ethnicity is prohibited not only under general principles of non-discrimination embodied in the human rights treaties cited above, but also under customary law and the principles and charters of international military tribunals which define persecution based on racial, religious, or political grounds as a crime against humanity.
- 4.17 The historical record clearly establishes that the vast majority of Palestinian refugees displaced between 1948-1950 became refugees as a result of forced expulsion by Zionist/Israeli forces. (See, for example: Benny Morris, *The Birth of the Palestinian Refugee Problem 1947 – 1949*, Cambridge: Cambridge University Press, 1987; Benni Morris, *Israel's Border Wars, 1949 – 1956*, Oxford: Clarendon Press, 1993; Salman Abu Sitta, *From Refugees to Citizens at Home*, London: Palestine Land Society and Palestinian Return Center, 2001.) Israel's actions and legislation, which stripped indigenous Palestinian Arabs of their housing and property and turned them over to agencies providing for the housing and settlement of Jewish immigrants, violated the customary norms of humanitarian law and principles of state succession and failed to recognize the equality of all those living in the territory that became Israel. Expulsion, land laws and policies employed by the State of Israel and para-state agencies during state succession and continuing today have resulted in systematic and gross discriminatory application of housing and property rights to such a degree as to be characterized as a crime against humanity.

Israel's expropriation and destruction of Arab housing and property under emergency regulations during state succession amounted to unlawful collective penalties, pillage and unlawful confiscation

- 4.18 The Hague Convention (No. IV) Respecting the Laws and Customs of War on Land ("Hague IV") has long been considered customary international law applicable during periods of international armed conflict. This was firmly established when the Allied Forces charged German officials responsible for the atrocities of WWII with violations of Hague IV despite Germany not having ratified the Convention. Furthermore, both Hague IV and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV) are now considered customary international law. Israel itself has confirmed this custom by justifying many of its expropriations and much of its property destruction on the necessity principles listed in Hague IV, Article 23(g) and Geneva IV, Article 147. Hague IV, Article 50 and Geneva IV, Article 33 forbids collective

penalties, including attacks on property. Protocol I, Articles 4(2)(b) and 75 of Geneva IV repeat these prohibitions against collective penalties, but affirm that the prohibitions apply at all times, both during war and in times of peace. Private property is protected from confiscation under Hague IV, Article 46. Pillage of any property is also prohibited under Hague IV, Articles 28 and 47. Geneva IV defines wanton and unnecessary destruction of property as a grave breach, for which reparations should be provided.

- 4.19 It is clear that Israel's aim in expropriating and destroying Palestinian property, during the period from 1948 to the 1950s, was to expel and transfer the Arab population in order to settle the Jewish population in the area. Therefore, the prohibitions against expulsion and transfer of the inhabitants of an area by the occupying force during war time embodied in Hague IV, Article 23(g) and Geneva IV, Article 147 apply. Although Israel has justified much of its land expropriation, particularly under the emergency regulations, as being "necessary" and "proportional" war measures, its actions did not meet either the necessity or proportionality requirements of Hague IV, Article 23(g). Even if such an argument could be made prior to the signing of the Armistice Agreements of 1949, it was inapplicable once these agreements terminated hostilities. The evacuation of the residents of Kafr Bir'im under such Emergency Regulations in 1949, the destruction of the village and expropriations of land well after the armistice agreement with Lebanon was signed, and the transfer of these lands for use by Jewish settlements illustrates the illegal policy employed by Israel at that time. Israel's early land laws, particularly the Emergency Regulations and the Absentees' Property Law were intended to, and effectuated, Israel's plan to permanently dispossess Palestinian Arabs in Israel. Israel's expropriation and destruction of Arab land and property amount to unlawful collective penalties on the Palestinian Arab population in Israel and has been to such a degree as to constitute pillage, for which Israel owes reparations. Population transfer is also a crime against humanity based on Article 7(1) of the Rome Statute of the International Criminal Court.

V. PETITIONERS INSIST THAT ISRAEL BE OBLIGATED TO PROVIDE REPARATION TO PETITIONERS FOR ITS ILLEGAL LAND EXPROPRIATIONS, UNDER BINDING PRINCIPLES OF RESTITUTION AND COMPENSATION

International law Requires Restitution as the Remedy for the Wrongful Taking of Property

- 5.1 Restitution of property and--only when restitution is impossible--compensation for lost or damaged property, are the required form of reparation for persons who have suffered violations of their housing and property rights. Recently, this Commission adopted the "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law," developed in accordance with Resolution 1999/33 affirming the right to restitution and compensation. Article 21 obliges states to provide restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to victims of international human rights and humanitarian law violations. Article 22 establishes restitution, including return of property and the return to one's place of residence, as the required method of reparation. Article 23 underscores that states should provide compensation only as a second preference to restitution for damage that is economically assessable.

- 5.2 The principle that restitution is the required remedy for violations of international law has been firmly entrenched since 1928, in the Permanent Court of International Justice (PCIJ) decision, Chorzów Factory (Indemnity) Case. In *Chorzów Factory*, the PCIJ established that for wrongful property taking, restitution must be made—that is, return of the property itself to the victim—in order to undo the harm caused by the violation, and only if restitution were not possible should a state pay compensation equal to the value of restitution. Most recently, this principle has been codified in The International Law Commission's Articles on State Responsibility, which elaborate on a state's obligations to provide restitution for internationally wrongful acts. Articles 36 and 37(1) state that restitution is the required reparation for property taking, in order to re-establish the situation that existed before the wrongful act, and compensation is to be paid only to the extent that restitution is not materially possible. These principles are repeated in the U.N. Guiding Principles on Internal Displacement, Article 29(2).
- 5.3 Whether Israel's initial property taking was wrongful under treaty or customary law at the time is now irrelevant, as long as the violation continues to the present. The European Court of Human Rights (ECtHR) has developed significant jurisprudence on the principle that states are liable for rights violations that began before the state ratified applicable human rights instruments, as long as there is a continuing violation. See Papamichalopoulos and Others v. Greece, 18/1992/363/437 (1993). See also, Loizidou v. Turkey, 40/1993/435/514 (1996), in which the ECtHR, in a closely analogous case to these Palestinian property claims, held that Turkey was liable for property confiscations occurring almost two decades before Turkey became subject to the Court's jurisdiction. The European Convention (ECHR) provisions under which these cases have been decided are almost identical to the provisions of the human rights treaties cited above to which Israel is bound. Very similar to Art. 17(1) of the ICCPR, Art. 8 of the ECHR provides that everyone has the right to respect for private and family life, home, and correspondence.
- 5.4 Recently, other United Nations bodies have affirmed the rights of victims of international law violations to reparations, specifically restitution. The U.N. Sub-Commission on Protection and Promotion of Human Rights reaffirmed the right of all refugees and displaced persons to return to their homes and places of habitual residence as an indispensable element of reconciliation in its Resolution 1998/26. It also urged all states to develop judicial mechanisms to ensure the "free and fair exercise of the right to return to one's home." The Committee on the Elimination of Racial Discrimination highlighted the relevance of CERD Article 5 obliging states to protect the right to housing without discrimination to refugees and internally displaced persons in its Recommendation No. 22. The Committee confirmed the rights of all such persons to return to their homes, if they should so choose, have their property restored to them, and be compensated for any property that cannot be restored.
- 5.5 The statutes of international criminal courts also demonstrate international consensus for the goal of restitution as the primary means of victims' reparations. Article 75 of the Rome Statute of the International Criminal Court, Article 105 of the International Criminal Tribunal for the Former Yugoslavia, and Article 23 of the International Criminal Tribunal for Rwanda all give their courts power to provide restitution, including the return of property, and compensation to victims.

5.6 Many voluntary repatriation agreements have implied or explicitly affirmed the right of returning refugees and internally displaced persons to restitution of housing, land and property. The 1991 agreement between the UNHCR and Guatemalan government bound the government to do "all in its power to guarantee" that returnees who had owned or held land would be able to recover and register that land, and that only upon the agreement of the returnee may he or she receive compensation rather than restitution. The 1994 agreement for the return of refugees and displaced persons between Abkhazia, Georgia, and the Russian Federation provided for returnees to get back both movable and immovable property, and to be compensated should that property be lost or non-returnable. The 1996 declaration by the Liberian government on the rights of returnees specified that returnees should have the rights to their *original* land restored and that the government would facilitate the restitution of movable and immovable property to the extent possible. Other examples of repatriation agreements including the right to restitution of housing and property are those in Kosovo, Croatia, Kuwait, Angola, Rwanda, Myanmar, Mozambique and Zimbabwe, the DRC, Afghanistan and Iran, Cambodia, Eritrea and Ethiopia, Tajikistan, and Bosnia and Herzegovina. The 1995 Dayton Agreement that ended the conflict in Bosnia and Herzegovina contains the most specific incorporation of restitution and return rights for refugees and displaced persons of any agreement to date. Annex VI of that Agreement created an international mechanism to enforce the obligations of the agreement which focused on the absolute right to restitution of property, and compensation for property that could not be restored – in the Bosnian case, no compensation has been paid, as the remedy for property claims has uniformly been restitution. Of particular note are the agreements in Mozambique, Guatemala, and Tajikistan, which entitled returnees to repossess former lands and homes, whether or not they had previously possessed official title.

5.7 The Petitioners submit that the international consensus on property and housing restitution in the context of the return of refugees and internally displaced persons is to such a degree as to make restitution the required form of reparation for Israel's violations of their housing and property rights.

International consensus on the right to restitution in the specific context of Palestinians

5.8 In 1948, the UNGA passed Resolution 194(III), in which the key paragraph on the resolution of the refugee problem, paragraph 11, states that:

"...[T]he refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and... compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible..."

5.9 The Resolution further instructs a UN Conciliation Commission (UNCCP) to be formed to facilitate repatriation, resettlement, rehabilitation, and compensation. In 1950, the

UNCCP Secretariat published a paper on the historical precedent for restitution, observing that “[the] underlying principle of paragraph 11, sub-paragraph 1, ... is that the Palestine refugees shall be permitted ... to return to their homes *and be reinstated in the possession of the property* which they had previously held.” The Secretariat also wrote that, “whenever it is established that, under international law, the property of a refugee has been wrongfully seized, sequestered, confiscated, or detained by the Israeli Government, the claimant is entitled to restitution of the property, if it is still in existence, plus indemnity for damages.” Resolution 194(III), para. 11, and the drafting history leading to its passage, was understood to incorporate what was already binding law on restitution at the time, and as has been discussed above, has only been strengthened by incorporation in human rights instruments, international jurisprudence, and state practice since then.

- 5.10 UNGA Resolution 36/146 C further affirmed the rights of those displaced by hostilities beginning in June 1967 and afterwards to return to their homes or former places of residence. The inalienable right of the Palestinian People to return to their homes and property was reaffirmed by the General Assembly in 1974 (Resolution 3236).

Recent frameworks for resolution of the Israeli-Palestinian conflict are insufficient to remedy Israel’s violations of human rights and humanitarian law

- 5.11 In 2002, the United States brokered the Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict. Similar to the earlier Oslo Accords, the Agreement defers the issue of refugees for the future and simply requires that an “agreed, just, fair and realistic” solution to the refugee issue be found. There is no explicit reference in the Agreement to Resolution 194(III) or the principles of restitution so prominent in virtually every other agreement between states on solutions to problems of refugees and displaced persons.

- 5.12 In light of the international consensus on restitution as the primary form of reparation for violations of housing and property rights, the above frameworks are inadequate for resolution of the property and housing claims of the Petitioners and their communities in Israel. As articulated by the International Court of Justice quoting the Chorzów Factory decision, Israel has an obligation to return the victims to a situation such as would exist had there been no violations at all. To deny the petitioners their right to restitution of their property and housing while the international community protects these rights for other victims of similar violations would constitute a discriminatory application of fundamental rights, prohibited under the UDHR, CERD, CESC, and ICCPR.

VI. REQUEST FOR URGENT MEASURES, REMEDIES AND RECOMMENDATIONS

Petitioners request the Human Rights Council to:

Adopt a resolution which condemns the expropriation of land and other property in Israel, by the State of Israel, from the Palestinian Arab land holders and finds that these actions

constitute a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms under international customary and treaty-based law that must be halted immediately, and that housing and property restitution must be provided to the victims as the appropriate remedy under international law.

Adopt a resolution urging the State of Israel to:

- 1) Immediately reconstitute and restore the lands and properties to the Palestinian Arab landholders of the village of Kafr Bir'im, and Shibli (Arab As-Subieh) represented by Petitioners here.
- 2) Immediately pay compensation to the Petitioners for the wrongful taking, loss of income and damage to the properties of the Village of Kafr Bir'im and the Arab As-Subieh, in addition to the required restitution of the properties themselves.
- 3) Ensure the physical safety and protection of Petitioners here from any threats or risks to themselves or their families or denial of any of their rights resulting from their bringing this Petition, at the hands of any state or non-state entity.
- 4) Cease and desist any further actions, policies, or legislation that confiscates, constrains, expropriates or removes from the use, title, ownership or leasehold of Palestinian Arabs their lands and properties, including in the context of measures undertaken by the State of Israel and para-state agencies (WZO, JNF, and their affiliates).
- 5) Repeal all laws and regulations comprising the illegal land regime.
- 6) Comply with all international obligations in accordance with the observations issued by the UN human rights treaty bodies, including implementation of the right of return and housing and property restitution of internally displaced Palestinians, "present absentees", and the land rights of Bedouin citizens (CEsCR: E/C.12/1/Add.27, paragraphs 25, 41, 42; E/C.12/1/Add.90, paragraph 43; CCPR/79/Add.93, paragraph 14); implement the right of return for all Palestinians and permit them to repossess their homes in Israel (CERD/C/304/Add.45, paragraph 18); and reform land and nationality laws as well as the state's relationship with para-state Zionist agencies which discriminate against Palestinian citizens and refugees (CESCR: E/C.12/1/Add.27, paragraphs 11, 13, 35; CCPR/79/Add.93, paragraph 25).

Adopt a resolution:

1. Appointing a Special Rapporteur or independent Expert to study the question of wrongful Israeli expropriation of Palestinian properties in Israel and also incorporating the subject matter of this Petition into the mandates of relevant Special Rapporteurs.
2. Inviting the parties to this Petition to a hearing at the Commission, in order to provide additional information and clarification.
3. Recommending to the United Nations Security Council that it take up the question of wrongful Israeli expropriation of Palestinian property in Israel, and resolve that such

property be immediately restored under the accepted principles of international law as required under UNGA Res. 194(III), para. 11.

4. Recommending to the UN General Assembly that it issue a Resolution reaffirming the principle of UNGA Res. 194(III), para. 11, clarifying that repeal of Israel's discriminatory land laws are required as a matter of international law, that all Palestinian Arabs, original owners of property must be restituted of their properties within Israel, and that the records of the UNCCP be made accessible to Palestinian claimants for the purposes of proving ownership and title.
5. Recommending to the UN General Assembly to re-open the UNCCP registry to take into account continuing land confiscations.