

Written Statement: 34<sup>th</sup> Session of the UNHRC, 22 March 2017

## **Israel's Forcible Transfer of Jerusalem Palestinians through Coercive Environment**

BADIL Resource Center for Palestinian Residency and Refugee Rights reiterates its deep concerns over Israel's escalating discriminatory policies in East Jerusalem, which forcibly transfer<sup>1</sup> Palestinians by means of a 'coercive environment'<sup>2</sup> that makes life unbearable. While forcible transfer triggers the State's responsibility for internationally wrongful acts amounting to war crimes and/or crimes against humanity,<sup>3</sup> if committed through acts or omissions attributable to that State, it requires third States' responsibility to act individually and collectively to end it.<sup>4</sup> Practices implemented in East Jerusalem are also implemented in the rest of the occupied Palestinian territory (oPt) under Israeli full control, namely 'Area C'.

### **Discriminatory zoning and planning<sup>5</sup>**

Since Israel illegally annexed East Jerusalem in 1967 and claimed Jerusalem as its unified capital in 1980<sup>6</sup> it has sought to attain a discriminatory demographic majority of 70 percent Jewish-Israelis to 30 percent Palestinians in the city.<sup>7</sup> This entails the institutionalization of discriminatory policies in order to reduce the Palestinian population through the neglect and destruction of infrastructure, economy, and services in East Jerusalem, the severing of East Jerusalem from the occupied West Bank, and the curtailment of Palestinian building. In the past few years, only 7 percent of building permits were given to the 39 percent of the population of Jerusalem, which is Palestinian.<sup>8</sup> Accordingly, from 1 January 2016 to 31 January 2017, Israel illegally demolished 190 structures in East Jerusalem displacing 295 persons for lack of permit, according to UN OCHA. The recorded rates for administrative demolitions are the highest since 2009. In contrast, in January 2017 Israel approved the construction of 566 illegal housing units for colonizers in East Jerusalem.

In 2002, Israel began to give Palestinian homes in Batan al-Hawa, Silwan, to colonizers who had occupied them, in violation of international law. Nine out of 50 total parcels of land in the neighborhood have already been confiscated. The Palestinian residents suffer severe harassment from colonizers and many families are being forcibly transferred. By December

<sup>1</sup> Art 49 GC IV, ICRC, 1949; Art 8(2)(a)(vii), A/CONF.183/9, ICC, 1998.

<sup>2</sup> 'Coercive environment' is recognized by Art. VII(68), A/HRC/31/43, UN SecretaryGeneral, 2016.

<sup>3</sup> Art 147, GC IV, ICRC, 1949; Art 7 A/CONF.183.9, ICC, 1998

<sup>4</sup> Art 146, GC IV, ICRC, 1949; Art 7 & Art 86 A/CONF.183.9, ICC, 1998; Art 48, "Draft Articles on Responsibility of States for Internationally Wrongful Acts", International Law Commission, UNGA, 2001.

<sup>5</sup> For more information, see "Forcible Transfer: the Case of Palestine: Discriminatory Zoning and Planning" BADIL, December 2014.

<sup>6</sup> Basic Law: Jerusalem, Capital of Israel, 1980.

<sup>7</sup> "Local Outline Plan Jerusalem 2000" Jerusalem Municipality, 32.

<sup>8</sup> Hasson, Nir. "Only 7% of Jerusalem Building Permits Go to Palestinian Neighborhoods", Haaretz, 7 December 2015.

2016, there were pending eviction orders against 81 Palestinian families.<sup>9</sup> According to UN OCHA, since 2009 there have been 84 demolitions in Silwan displacing over 133 people.

### Revocation of permanent residency<sup>10</sup>

In 1988 the Israeli Supreme Court determined that instead of citizenship, East Jerusalem Palestinians held permanent residency status<sup>11</sup> revocable at the discretion of the Israeli Minister of Interior (MOI),<sup>12</sup> thereby treating the Palestinian population as foreign aliens constantly at risk of forcible transfer. Following the 8 February 2017 truck-ramming attack in Jerusalem alleged against an individual from Jabal al Mukabir, East Jerusalem, the Israeli MOI revoked the residency status of 13 of his relatives<sup>13</sup> under the justification of a “breach of allegiance to the state of Israel”, a criteria not required of occupied populations.<sup>14</sup> In June 2006, the status of three elected members of the Palestinian Legislative Council and the Minister for Jerusalem affairs were revoked on these same illegal grounds. Between 1967 and 2015 the MOI revoked more than 14,565 Palestinian residencies.<sup>15</sup>

### Collective Punishment

Several of the policies Israel uses to forcibly transfer Palestinians through a coercive environment are also illegal collective punishment.<sup>16</sup> For instance, punitive home demolitions and arbitrary expulsions, evictions, and confiscations are executed by Israel against the family and neighborhood of an individual who has allegedly committed a “crime”. Additionally, Israel also often closes the main roads of the neighborhoods, collectively punishing the residents by preventing their movement. In its efforts to suppress lawful Palestinian resistance,<sup>17</sup> Israel commits targeted killings as well as discriminatory wide arrest campaigns such as on July 26, 2016 when 700 Israeli police arrested 52 Palestinians in Ras al Amoud and Silwan, East Jerusalem.<sup>18</sup> In 2016 it arbitrarily expelled seven politically active residents of Jerusalem without charging them of any crime.<sup>19</sup>

On 17 January 2017, Nadia Abu Jamal, wife of deceased Ghassan Abu Jamal, the alleged individual behind an attack in Jerusalem, was arrested and her family unification that had enabled her to remain in the city with her children was revoked. Her children, who suffer from health complications, had their national insurance taken away. Additionally, Israeli forces punitively demolished Nadia’s home and sealed the homes of two relatives who were also

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<sup>9</sup> “Batan al-Hawa neighborhood, Silwan: The next target for “Judaization” of East Jerusalem”, B’Tselem, 11 December 2016.

<sup>10</sup> For more information see “Forcible Transfer: The Case of Palestine: Denial of Residency”, BADIL, April 2014.

<sup>11</sup> Israel: Law No. 5712-1952, Entry into Israel Law, 5 September 1952.

<sup>12</sup> 11(a)(2), *Ibid.*

<sup>13</sup> Art 25 A/CONF.183/9, ICC, 1998.

<sup>14</sup> Art. 45, *Laws and Customs of War on Land* (Hague IV), 1907; Art 68(3) GC IV, ICRC, 1949.

<sup>15</sup> “Status Revocations in East Jerusalem”, Hamoked, 28 February 2016.

<sup>16</sup> Art 33 GC IV, ICRC 1949.

<sup>17</sup> A/RES/34/44 (23 November 1979), UNGA Res. A/RES/35/35 (14 November 1980); UNGA Res. A/RES/36/9 (28 October 1981).

<sup>18</sup> “Israeli police detain 52 Palestinians in Jerusalem in self-styled ‘700 campaign’”, Ma’an News Agency, 27 July 2016.

<sup>19</sup> For more information see “Forcible Transfer: The Case of Palestine: Suppression of Resistance”, BADIL, December 2016.

accused of committing an attack. Nadia Abu Jamal and her children have not been charged with any crime.

Likewise, following the revocation of the residency statuses in Jabal al Mukabir, Israel also punitively demolished 11 homes in the neighborhood as part of its policy of punitive home demolitions. 40 more units were delivered demolition notices on punitive grounds and 41 others on the basis of construction without a permit. An illegal colonizer house is already being constructed on the site of the individual's house. The demolition of homes belonging to those who have not committed any crime is collective punishment.<sup>20</sup>

In addition to the above cases of collective punishment, Israel also violates international principles of proportionality, such as that prohibiting the excessive use of force,<sup>21</sup> as in the authorization of Israeli authorities to use live ammunition against youth throwing stones since September 2015 and disproportional punishment.<sup>22</sup> Following an escalation in punitive policies beginning in October 2015, the house of Sur Baher resident Sara Dwayat, who had not been charged with any crime, was punitively filled with concrete and sealed with iron bars following the revocation of her son's residency and sentencing to 20 years in prison for throwing stones.

## Recommendations

Israel's escalating policies of forcible transfer in East Jerusalem amount to a larger illegal colonial plan for the whole oPt.<sup>23</sup> On 20 January 2017 Israel approved the construction of 6,000 new colonizer housing units; on 6 February 2017 it passed the "Regularization Law" which legalizes illegal colonial outposts; and it is on the verge of passing a law approving the illegal annexation of colonial bloc Ma'ale Adumim and Area E-1, which would give Israel sovereignty over 6,000 more hectares of Palestinian land and forcibly transfer over 8,000 Palestinian Bedouins.

On 23 December 2016 the United Nations Security Council adopted resolution 2334, demanding that Israel "immediately and completely cease[s] all settlement activities in the occupied Palestinian territory, including East Jerusalem". In violation of Article 25 of the United Nations Charter, Israel stated that it will never implement this "shameful, [...] hostile and unbalanced" resolution. Israel's reaction shows that it has no intention to stop its unashamed policies of forcible transfer and colonization.

BADIL is deeply concerned about the continuous failure of the international community to pressure Israel to comply with its obligations under the UN Charter, international human rights law, and international humanitarian law in accordance to States' Responsibilities.<sup>24</sup>

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<sup>20</sup> Art 53 GC IV.

<sup>21</sup> Provision No. 4 & No.5, UN Basic Principles, 1990.

<sup>22</sup> Art. C(86) UNGA Report A/HRC/4/40/Add.3, Working Group on Arbitrary Detention, 2006.

<sup>23</sup> CA 1 ICCPR and ICESCR, 1966; UNGA Res. 1514(XV), 14 December 1960; UNGA Res. 2649 (XXV), 30 November 1970; Res 2787 (XXVI), 6 December 1971; Res. 3070 (XXVIII), 30 November 1973.

<sup>24</sup> Art 48, "Draft Articles on Responsibility of States for Internationally Wrongful Acts", International Law Commission, UNGA, 2001.

Accordingly, in light of Israel's non-compliance BADIL again calls upon:

1. Third party states and regional bodies, UN bodies and agencies, to condemn Israel's creation of a coercive environment in East Jerusalem, which leaves Palestinians no option but to abandon their homes and communities;
2. High Contracting Parties to honor their obligation under Common Article 1 and Article 146 of the Fourth Geneva Convention to identify and bring to justice individuals alleged to have committed – or to have ordered to be committed – acts of forcible transfer inside the oPt.