

## LEGAL BRIEF

November 2011

**The proposed relocation plan of 2,300 Arab Jahalin Bedouins from the Jerusalem periphery to a site next to the Abu Dis Municipal garbage dump, due to commence in January 2012,<sup>1</sup> is a clear violation of international humanitarian law. Furthermore, it is a grave breach of the Geneva Conventions - an unquestionable war crime and possibly a crime against humanity. This policy is also in violation of clear prohibitions under human rights law, including the right to private and family life, and infringes upon the right to an adequate standard of living. In addition, it may also amount to inhumane treatment. Due to these violations of the international legal framework, the plan should be halted immediately and any steps taken to go through with this plan must be investigated by domestic authorities, and, failing this, the international community.**

Article 49 of the Fourth Geneva Convention (GCIV), a convention universally ratified, including by Israel, sets out the clear framework regarding the displacement of civilians during situations of occupation. The occupied nature of the West Bank is not in question, with a plethora of international documentations stating this fact, coupled with the Israeli High Court of Justice clearly setting out that Israel has the status of Occupying Power.<sup>2</sup> Article 49 of the Geneva Convention is unambiguous in stating in the text of Article 49 that individual or mass forcible transfer is strictly prohibited,<sup>3</sup> *regardless of the motive*.<sup>4</sup> Furthermore a violation of Article 49 is deemed to be a grave breach under Article 147 GCIV.

### The policy amounts to forced transfer

In order to comprehensively assess whether or not we are dealing with forced transfer, there are three essential elements which need to be addressed: firstly that the victim(s) were protected persons pursuant to GCIV; secondly through an act or omission civilian(s) are *forcibly* removed from their residence, or from areas where they were present, to a place outside of that area; and thirdly the removal was not warranted for the security of the population or for reasons of imperative military necessity. The 'exception' provided for applies only to situations where there are on-going hostilities, which is clearly not the situation here. It is important to note that even if the removal could be justified under imperative military necessity, this *does not* justify forcible transfer, it simply allows for a temporary evacuation of civilians. Furthermore, the Bedouin Jahalin, as non-Israeli citizens, are protected persons under the Geneva Conventions and hence the legality of the 'relocation plan' rests squarely on establishing the *forcibility* of the transfer.

Those transfers motivated by an individual's own genuine wish to leave are lawful and fall outside of the scope of the provision. All transfers which are not motivated by an individual's own genuine choice are deemed to be forcible. Case law has reinforced the notion that "*The term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against a person or persons, or by taking advantage of a coercive environment.*"<sup>5</sup>

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It is important to note that any apparent consensual declaration by the protected civilians does not necessarily remove the 'forcibility' element, as consent may have been "*rendered valueless by the situation.*"<sup>6</sup>

In assessing the proposed transfer of the Jahalin Bedouin, a clear indicator of the general wish to stay can be identified from the statements of the Bedouin Protection Committee in which they have communicated to United Nations officials that they wish to, in order of preference: i) Return to the Negev; ii) Stay where they are, iii) if they have no other choice but to leave they want to go to a location of their choice. In addition to this, there are further relevant factors which indicate the forcible nature of the relocation plan, in particular the absence of any dialogue between the Civil Administration on the relevant historical context of previous transfers of the Bedouin communities, as well as the ongoing expansion of the illegal Maale Adumim settlement.<sup>7</sup>

It should be noted that there may be cases where individuals have expressed a clear desire to leave due to poor living conditions and are negotiating a settlement package to ensure a better quality of life and improved security of location. With regard to these instances, it may still be the case that the desire to leave has been created by the environment in which they live. This environment has been created by the continued threats and harassment made against the Jahalin by the Civil Administration (ICA) and settlers, coupled with the failure of the Occupying Power to provide them with their basic needs. Even if the transfer was not deemed forcible in such individual cases, Israel would still be bound by clear obligations with regard to forced evictions as regulated by human rights law by way of the International Covenant on Economic, Social and Cultural Rights.<sup>8</sup>

### No lawful justification

In view of the administrative demolition orders pending against the communities, and their lack of access to electricity and water network, it may be argued that the proposed plan is in keeping with Israel's responsibility as an Occupying Power to ensure public order and safety of the protected civilians in the oPt. While Article 43 of the Hague Regulations does authorize the occupying power to

take all measures to restore, and ensure, as far as possible, public order and safety, there is nothing to suggest that the proposed plan is in any way a good faith application of this provision for the following reasons, namely: i) the communities have not been consulted nor have their needs and wishes been taken into account by the ICA; (ii) the communities reside in an area slated for further illegal Israeli settlement; (iii) the conditions of life in which the community presently exist are the result of the discriminatory policies of the Occupying Power, including in favoring the interests of Israeli settlers over those of the protected civilian population, (iv) the transfer is a continuation of a pattern of dispossession (v) the proposed site is in close proximity to the municipal garbage dump, and would undermine the Bedouin communities' access to grazing lands and infringe upon their traditional way of life.

As we can see this transfer violates clear human rights obligations, notably infringing upon the right to freedom of movement (Article 12 ICCPR), private life (Article 17 ICCPR), family life (Article 23 ICCPR), adequate standard of living (Article 11 CESCR) and, depending on the circumstances in which the villages will be destroyed, may amount to inhumane treatment (Article 7 ICCPR).<sup>9</sup> Hence Article 43 of the Hague Regulations cannot be invoked in a manner which clearly violates human rights obligations. Furthermore human rights arguments cannot be misused to undermine other fundamental rights, for instance the right to water cannot be used as a justification for violating other obligations, and in fact this right must be secured in the current location.

Additionally there may be other significant violations of the Geneva Conventions, notably with regard to the destruction of property, which is central to the relocation plan. Hence, is it very likely that this would imply a violation of Article 53 GCIV, which prohibits the destruction of private property except in case of absolute necessity for military operations.

## Conclusion

The relocation of the Jahalin Bedouin is not only a violation of a rule of international humanitarian law and human rights law, but is a grave breach that, falling under the category of unlawful transfer, may constitute a crime against humanity.<sup>10</sup>

In light of the above analysis, Diakonia calls upon the international community to live up to its commitment under Common Article One of the Geneva Conventions to take all measures to ensure that such a clear and unambiguous provision is indeed respected and this wanton violation is prevented. Furthermore, the international community should demand that Israel live up to its obligations as Occupying Power to provide for the education, humanitarian and development needs of the Jahalin population in their current location.

Do you or your organisation want to learn more about IHL and its applicability to the oPt? Visit our website 'An Easy Guide to International Humanitarian Law in the occupied Palestinian territory', or contact us to set up a general or specialised briefing by our legal advisors.

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## Endnotes

1. For sources of information on the transfer see: The Israeli Committee Against Housing Demolitions, 'Nowhere left to go: Arab al-Jahalin Bedouin Ethnic Displacement' (24 October 2011). Available online at <http://www.icahd.org/?p=7825>; B'Tselem, 'Israel Plans to expel tens of thousands of Bedouins from Area C, West Bank' (10 October 2011). Available online at [http://www.btselem.org/settlements/20111010\\_forced\\_eviction\\_of\\_bedouins](http://www.btselem.org/settlements/20111010_forced_eviction_of_bedouins). See also: Amira Hass, 'Israel to forcibly evict Bedouins from West Bank' Haaretz, (14 September 2011). Available online at <http://www.haaretz.com/print-edition/news/israel-to-forcibly-evict-bedouins-from-west-bank-1.384290>.
2. Israeli Supreme Court, sitting as a High Court of Justice Israel- For example, H.C. 390/79, Mustafa Dweikat et al. v. the Government of Israel et al. (the Elon Moreh Case), 34(1) Piskei Din 1; excerpted in: (1979) 9 Israel YbkHR 345.)
3. Article 49 prohibits deportation and forcible transfer, the two aspects differentiated by the fact that "deportation requires the displacement of persons across a national border, to be distinguished from forcible transfer which may take place within national boundaries." See Judgement, Krnojelac (IT-97-25 ) Trial Chamber, 15 March 2002, §474.
4. Art. 49. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.
5. Report of the Preparatory Commission for the International Criminal Court, UN Doc PCNICC/2000/1/Add.2, at 7 ftnt 5. See also Judgement, Kristic, (IC-98-33-T) Trial Chamber , 2 August 2001, § 529. See also . Judgement, Naletilic and Martinovic (IT-98-34) Trial Chamber, 31 March 2003, § 519: "Forcible transfer is the movement of individuals under duress from where they reside to a place that is not of their choosing."
6. Judgement, Naletilic and Martinovic (IT-98-34) Trial Chamber, 31 March 2003, § 519 ftnt 1357.
7. Human Rights Watch, Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories (2010), Section XI 'Jahalin Bedouin and Ma'ale Adumim'. Available online at <http://www.hrw.org/ar/node/95059/section/10>
8. See in particular General Comment 7, Forced Evictions, Committee on Economic, Social and Cultural Rights; Basic principles and Guidelines on Development-Based Evictions and Displacement, Annexed to the report of the Special Rapporteur on adequate housing, A/HRC/4/18.
9. See ECtHR Ayder & Others v. Turkey Judgment, , 8 January 2004, 109-110; IACtHR, Ituango Masscares v. Columbia Judgment, 1 July 2006, 272-274; AComHPR Sudan Human Rights Organizations and Centre on Housing and evictions v. Sudan Coms 279/03 and 296/05, 27 May 2009, at 157-159.
10. There is strong evidence to suggest that the proposed transfer of 2,300 people would manifest itself as a widespread attack against a civilian population. Such an argument would be further strengthened as a widespread or systematic attack if the transfer is merely the first stage of a broader plan to relocate over 27,000 people within the West Bank. See Amira Hass, 'Israel to forcibly evict Bedouins from West Bank' Haaretz, (14 10 2011). Available online at <http://www.haaretz.com/print-edition/news/israel-to-forcibly-evict-bedouins-from-west-bank-1.384290>.



# BEDOUIN RELOCATION: THREAT OF DISPLACEMENT IN THE JERUSALEM PERIPHERY SEPTEMBER 2011

## FAST FACTS

- Around 2,300 Bedouin reside in 20 communities in the hills to the east of Jerusalem. More than 80% of them are refugees. Over two-thirds are children.
- The communities have all lost access to land due to settlement expansion, most have demolition orders pending against their homes, none have access to the electricity network and only half are connected to the water network.
- Despite receiving humanitarian assistance, 55% of Bedouin/herding communities in Area C of the West Bank are food insecure.
- Over 200 families were re-located from the area in the 1990s, some by force. Of these, more than 85% report they had to abandon their traditional livelihoods.
- More than 500,000 Israeli civilians live in Israeli settlements in the West Bank, including in East Jerusalem, built in contravention of international law.
- As of 1 September 2011, at least 755 Palestinians had been forcibly displaced in 2011 due to demolitions and 127 due to settler violence – some 40% of these were Bedouin.

1. **The Palestinian Bedouin communities living in the hills to the east of Jerusalem are at risk of forced displacement.** The communities have been informed by the Israeli authorities that they have no option but to leave the area, as part of a larger plan to relocate Bedouin communities living in Area C, where Israel retains control over security as well as planning and zoning. Reports indicate that this plan may begin as early as January 2012. At this stage, most of the communities have indicated that they are against the proposed plan.

2. **Concerns have been raised about the proposed relocation site.** The site is located close to Al Ezariya town, near where Bedouin families were relocated in the late 1990s to allow for the expansion of the Ma'ale Adummim settlement. The proposed site does not meet minimum standards in terms of distance from the municipal dumping grounds, which is likely to pose a health hazard to the communities, and provides limited access to grazing lands. Previously relocated families report negative consequences, including health concerns, loss of livelihood, deteriorated living conditions, loss of tribal cohesion and erosion of traditional lifestyles.

3. **The Bedouin's current homes are located in an area that holds strategic significance for further expansion of Israeli settlements.** This includes the E1 plan, which foresees the expansion of Ma'ale Adummim and its linkage to Jerusalem. If implemented, these plans, along with Barrier construction in the area, risk preventing Palestinian

growth and development and disrupting the territorial contiguity of the West Bank.

4. **The threatened communities, most of whom are refugees, pursue a traditional life-style of herding and have suffered a serious decline in living conditions in recent years.** There are increasing restrictions on their access to land, resources and markets for their products. They live under the regular threat of demolition of homes, schools and animal shelters due to the inability to obtain Israeli building permits. They experience routine settler violence, alongside settlement expansion. Bedouin and herding communities throughout the West Bank face similar difficulties and are also at risk of forced displacement.

5. **Palestinian communities should be allowed to make a free and informed decision about their place of residence.** International law prohibits the forced transfer of civilians, regardless of the motive or means used, unless temporarily required for their own security or military necessity. The intentional destruction or confiscation of private civilian property, including homes, as well as the transfer of settlers into occupied territory, is similarly prohibited. As an occupying power, Israel has an obligation to protect the Palestinian civilian population and to administer the territory for the benefit of that population. Any voluntary move or transfer of civilians must meet international standards, including relating to a free and informed choice.