Coercive Environments:

Israel's Forcible Transfer of Palestinians in the Occupied Territory

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BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, human rights non-profit organization working to defend and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

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Executive Summary

Understanding and Identifying Israel's Forcible Transfer of Palestinians

Forcible transfer is strictly prohibited under Article 49 of the Fourth Geneva Convention and is recognized as a grave breach that can be prosecuted as an international crime. Palestinian refugees and Internally Displaced Persons (IDPs) represent the largest and longest-standing case of displaced people in the world today. It is impossible to fully understand or answer the Israel/Palestine 'question' without an appreciation of the scale and enduring nature of the forced displacement and transfer of Palestinians as well as the means by which Israel has pursued, and continues to pursue, this displacement.

In the first major wave of displacement and population transfer during the Nakba[1] of 1948 some 750,000 Palestinians were forced from their homes and land. This has been followed by successive waves of forcible transfer with the most prominent example being Israel's invasion of the Gaza Strip and the West Bank, including East Jerusalem, in 1967. That 'invasion' has subsequently transitioned into a deeply-entrenched military occupation characterized by, *inter alia:* unlawful, systematic fracturing and acquisition of Palestinian land by the Israeli occupying forces for the purpose of permanent Israeli settlement[2] construction (hereinafter colonies).

[1] Meaning 'catastrophe' in Arabic, 'Nakba' is the term given by Palestinians to the mass forced displacement that came with the creation of Israel in 1948.

[2] While the terms settlement(s) and settler(s) are widely used by almost all concerned actors (including Israel), it is vital to note that these terms conceal the illegal elements of establishing such entities and mask the reality in the oPt. Colonial actions such as settlement construction, illegal Israeli policies and Israeli settler implantation are hidden by such terms. The terminology which does convey this criminality and relevant Israeli practices under international law is colony/colonies, colonizer(s) and colonization.

This state of affairs has surpassed the legal definition and international framework intended to regulate instances of military occupation.

International attention and legal analysis relating to Israeli-perpetrated forced displacement and population transfer has primarily focused on colony construction and the transfer of settlers (hereinafter: colonizers) *into* the occupied Palestinian territory (oPt). Often overlooked is the unlawful forced displacement of protected persons *within* the oPt by the Israeli occupying forces which often serves as a precursor to the construction of Israeli colonies. .

Jurisprudence from the International Criminal Court (ICC) and other international criminal tribunals is consistent in holding that our understanding of the forcible nature of the displacement must not be limited to simple indications of physical removal. Forcible transfer also includes acts or omissions which amount to threats of force or coercion; the creation of fear of detention or violence; or taking advantage of a coercive environment. The essential component is that the displacement must be **involuntary**, with the person(s) in question being **deprived of genuine choice** in the decision to leave their homes and communities.

Despite the consistency in jurisprudence and increasing number of reputable independent bodies and organizations acknowledging that Israeli acts and policies inside the oPt are contributing to a coercive environment for Palestinians, depriving them of choice, analysis often falls short of asserting a causal connection between Israeli practices and policies and the forced displacement of Palestinians. Consequently, the criminal nature of Israel's actions and policies receives no consideration.

This report seeks to address that gap. It provides an authoritative, consensus-driven legal framework for the criminal offence of forcible transfer and 11 previously undocumented case studies which demonstrate the causal link between Israel's actions and the forcible transfer of Palestinians. This report also provides evidence that not only are huge numbers of Palestinians at grave *risk* of forcible transfer, pursued through a multitude of Israeli practices and policies, but also that Israeli-perpetrated forcible transfer of Palestinians is happening in the present day.

Contemporary Instances of Forcible Transfer in the oPt

Our research explores six thematic groupings of forcible transfer: the case of Hebron, Palestinian herder and Bedouin communities inside Area C, punitive home demolitions, the residents of 'seam zones', punitive residency revocations and unlawful war practices inside the Gaza Strip. Below is a summary of the case studies.

Hebron

Hebron (*Al-Khalil* in Arabic) is the largest city in the southern West Bank with a population of 208,000-215,000 residents. Alongside East Jerusalem, it is one of the two cities in the oPt where Israeli colonies are located within the city *itself*, namely in

and adjacent to the area of the Old City. Though the total number of colonizers inside Hebron varies according to the source, estimates range between 450 and 800 persons, who are also supported by a large contingent of Israeli soldiers and border police.

Under the terms of the 1997 Hebron Protocol, Hebron was divided into two administrative areas: 'H1', and 'H2'. The former, inhabited at the time by roughly 140,000 Palestinians, was assigned to the control of Palestinian Authority (PA), while control of H2, in which 30,000 Palestinians and the aforementioned Israeli colonies were located, was to be controlled by the Israeli occupying forces.[3] Inside and adjacent to H2, Israel subsequently implemented a range of severe restrictive and discriminatory policies, creating a uniquely coercive environment for Palestinian residents of Hebron. This environment has resulted in significant forced displacement.

Palestinians with homes in Hebron told BADIL that they had been forced to leave on account of severe movement restrictions, segregation, economic hardship and continual harassment and violence from Israeli soldiers and colonizers.

Palestinian Herder Communities inside Area C

Palestinian herder communities based in the West Bank, including Palestinian Bedouin populations, are particularly vulnerable to forcible transfer on account of their presence and reliance on large, unpopulated areas for the purpose of raising livestock. The majority of such areas, and indeed the majority of West Bank lands, fall into what was designated in the Oslo Accords (1993 and 1995) as 'Area C', over which Israel exercises full administrative control.[4] Due to the strategic importance of Area C to Israel it has used this control to create an environment in which it is increasingly difficult for Palestinians to remain.

Namely, Israel prohibits Palestinian construction on 70 percent of land inside Area C. For the remaining 30 percent, Israel has removed all Palestinian representation from the planning process, transferring this responsibility to the Israeli Civil Administration. The application process for a building permit has an extremely low success rate for Palestinians.[5] Palestinians therefore have little option but to build 'illegally' under Israeli law and face the high risk of demolitions. According to the Office for the Coordination of Humanitarian Affairs (OCHA), 2016 was a record year in the number of demolitions: Israel demolished or confiscated 1,089 Palestinian structures and displaced over 1,593 people.

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[3] For more information on the decline of the Palestinian population in the Old City of Hebron see: BADIL Resource Center for Residency and Refugee Rights. 08.2016. *Forced Population Transfer: the Case of Old City of Hebron*. 8-10. Available at: http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/CaseStudyFPT-Hebron(August2016).pdf

[4] The Oslo Accord's division into areas A, B and C, was meant to be temporary in order to enable a transfer of authority to the Palestinian Authority.

[5] According to OCHA, between 2010 and 2014, 1.5 percent of the Palestinian requests for building permits have been approved.

Few Palestinian communities in Area C have been connected to the public water network and none have been connected to the public electricity network. In addition, access to crucial grazing land is made increasingly difficult due to the route of the Israeli West Bank Barrier or 'Separation Wall' and the ever-expanding boundaries of colonies. As in Hebron, this expansion brings with it harassment and threats of violence from colonizers.

Members of Palestinian herder communities inside Area C told BADIL that they had been forced to leave their homes and communities on account of home demolitions and the resulting economic and social hardships which directly resulted from such demolitions, as well as hardships relating to Israeli-implemented movement restrictions which destroyed their livelihood, traditions, customs and culture. In addition, acts or threats of violence and harassment from Israeli colonizers, often conducted in the presence of Israeli military or police personnel, further contribute to a highly coercive environment for these communities.

Punitive Home Demolitions

Punitive home demolitions are those conducted by Israel in response to the actions or alleged actions of persons associated with the property in question. Punitive demolitions account for at least 6 percent of home demolitions conducted by Israel in the oPt.[6]

They typically occur at night or during a curfew, and the military authorities usually give residents only 30 minutes to two hours to remove their furniture and belongings. The Israeli military uses bulldozers or explosives to partially or completely demolish the homes. When it is logistically impossible to demolish a home, the army fill the home with rubble and concrete, thereby 'sealing' it. In addition to demolishing or sealing the residence, the authorities seize (de facto confiscate) the land and forbid residents from rebuilding on it in the future. In the two years between July 2014 and August 2016, Israeli authorities carried out 40 punitive demolitions and home sealings.[7] These actions have resulted in the forced displacement of 309 people including 135 children (43 percent). Yet, it is not only these families who are affected. Such demolitions frequently result in damage to neighbouring properties: during this same time period an additional 257 individuals, including 113 children, were affected by nearby demolitions. These "affected" people are not entitled to compensation for their lost or damaged property, even though they were not the demolitions' intended targets.

Such demolitions and 'sealings' qualify as a form of collective punishment as they target and affect whole families and communities, i.e. individuals who played no role

[6] Diakonia. 19.11.2013. IHL Resource Center. *House Demolitions.* Available at: http://www.diakonia.se/en/ihl/occupied-palestinian-territory/administration-of-occupation/house-demolitions1/

[7] B'Tselem. 10.2016. *Statistics on punitive house demolitions.* Available at: http://www.btselem.org/punitive_demolitions/statistics

in the alleged act for which the punishment is given, which is contrary to Rule 103 of Customary International Humanitarian Law and Article 33 of the Fourth Geneva Convention.

Residents of 'Seam Zones'

Seam zones are sections of Palestinian land situated within the occupied West Bank which have been isolated as a result of the erection of the Israeli annexation and Separation Wall, with their location falling in-between the Wall and the 1949 Armistice Line ('The Green Line'). Located in the seam zones are 150 Palestinian communities and 11,000 Palestinians (excluding residents of East Jerusalem) who live there. Upon completion of the Wall, seams zones will account for almost 10 percent of West Bank territory, resulting in an additional 25,000 Palestinians becoming isolated from the rest of the West Bank. Israel has designated the seam zones as closed military areas, denying residents' access to both Palestinian Authority and Israeli municipal services, and severely limiting Palestinian mobility by way of a complicated and discriminatory permit regime.

Life for Palestinian residents of seam zones is characterized by economic and social hardship, with communities isolated from friends and family living on the other side of the Wall. For example, those seeking to visit friends living inside seam zones must apply for permits, while Palestinians living outside seam zones are reluctant to marry those who live within, and vice versa. To do so would require the spouse from the seam zone to risk losing their entitlement to permanent residency inside the seam zone and ties with their family and community, or, alternatively, the spouse from the West Bank side of the Wall would have to go through an arduous and complicated process of seeking permanent residency in the seam zone, thereby losing their own familial, social, and professional ties. Such are the far-reaching implications of Israel's seam zone policy that the World Bank estimates that 170,000 Palestinians in the West Bank are directly or indirectly affected.

Palestinians displaced from their homes and communities inside a seam zone told BADIL that their decision to leave the area was based on economic and social hardships resulting directly from Israeli-implemented closures, movement and building restrictions, limited access to essential services, as well as suffering harassment from colonizers and Israeli military and police personnel.

Punitive Residency Revocations

Since its occupation of East Jerusalem in 1967, Israel has employed a range of inherently discriminatory policies which serve to entrench its hold over the city, which as of May 2015 had a Palestinian population of some 300,000. The stated aim is to achieve a desired Palestinian/Jewish Israeli population ratio inside the city of

30:70.[8] One such policy to achieve this ratio is the forced removal of Palestinians residing in East Jerusalem by revoking their permanent residency status, which is carried out at the discretion of Israel's Minister of Interior. Since the commencement of Israel's occupation of Jerusalem, the residence rights of more than 14,500 Palestinians have been revoked, with more than half of these revocations having occurred in the last ten years between 2006 and 2015. This illustrates a significant intensification of forced displacement.

Though Israel has historically undertaken such revocations on a number of grounds, in June 2006 a dangerous new precedent was set. It began revoking residency statuses of individuals affiliated with the Palestinian faction Hamas on the basis that such affiliation represented a violation of 'the minimal obligation of loyalty to the Israel'.[9] In October 2015, in reaction to intensified suppressive policies, a new wave of Palestinian struggle and reaction arose throughout the West Bank (including East Jerusalem), and Israel.[10] Israeli authorities subsequently announced that the permanent Jerusalem residency rights of those deemed 'terrorists' would be revoked. One week after that announcement, Israel notified four Palestinians suspected of committing violent acts against Israeli citizens (three of whom were accused of stone-throwing) that the Minister of Interior was considering exercising his discretionary power to revoke their residencies on the basis that their alleged acts constituted a "clear breach of allegiance" to the state of Israel. In January 2016, the ministry issued official residency revocation decisions against the four persons concerned.

Requiring Palestinian residents to pledge any duty of allegiance to Israel constitutes a direct contravention of International Humanitarian Law, which prohibits an occupying power from seeking the allegiance of members of an occupied population. In addition, upon issuing such a revocation, the very presence of the affected person(s) inside their own community is effectively criminalized, with grave sanctions applicable.. The affected persons, including their families, are therefore deprived of any genuine choice in their 'decision' to leave their homes and communities contrary to Article 49 of the Fourth Geneva Convention.

Unlawful Warfare Practices inside the Gaza Strip

On 7 July 2014 Israel launched Operation "Protective Edge" inside the Gaza Strip, initially conducted by way of air strikes and later shifting to a large scale ground

[8] Israel. Jerusalem Municipality. *Local Outline Plan No. 4: Jerusalem 2000 Master Plan*. Compiled by Eitan Meir et al. Jerusalem, 2004.

[9] Amendment 9 to Article 11 of the Citizenship Law (Authority for Revoking Citizenship), adopted in 2008: allows the revocation of citizenship due to "breach of trust or disloyalty to the state" of Israel.

[10] The new wave of Palestinian struggle and reaction has been attributed, among other things, to the increase in Palestinian frustration over ongoing violations of their fundamental rights. This was met with a sharp increase in the illegal use of force and collective punishment by Israel against protests, attacks and uprising by Palestinians throughout Mandate Palestine.

invasion. The operation officially concluded on 26 August 2014 with an unconditional ceasefire, yet the human cost of this 51-day military assault was incalculable. The physical landscape of the Gaza Strip was reduced to ruins and no resident was left untouched.

Throughout the offensive, 14,500 tank shells and approximately 35,000 artillery shells were fired by Israel, with the predictable results of destruction, suffering and loss of life. In excess of 2,250 Palestinians are recorded as having been killed by Israeli military action, including 551 children (24 percent) and 299 women (13 percent). During this same period, an additional 11,000 Palestinians were physically injured and some 169,750 Palestinian housing units were destroyed or damaged, leaving 108,000 people homeless. This staggering level of death, injury and destruction inevitably produced forced displacement of Palestinian civilians on a vast scale: at the height of the assault roughly half a million Palestinians were internally displaced inside the Gaza Strip, accounting for 28 percent of the enclave's total population.

During the operation, Israel actively targeted Palestinian residential dwellings, failed to distinguish between civilians and combatants, used imprecise and disproportionate warfare methods and not only failed to establish protected humanitarian areas in which the displaced could seek refuge but actively targeted those in flight.

During and after Protective Edge, the Gaza Strip was characterized by a lack of fundamental human rights, particularly those of personal safety, basic health, shelter and sustenance. As such, Israel stripped genuine choice from the decision of hundreds of thousands of Palestinians to flee their homes, with residents faced with an ultimatum of flight or a likelihood of death, serious injury and acute suffering to themselves or their family members. The resulting forced displacement was of an almost unimaginable scale, and must be distinguished from forced displacement which naturally occurs in instances of armed conflict fought within the confines of International Humanitarian Law. On this basis, Israel unlawfully and intentionally forcibly displaced Palestinian residents of the Gaza Strip.

Strict Exemptions under International Law

Article 49(2) of the Fourth Geneva Convention provides an exception to the prohibition on forced displacement, i.e. it provides grounds under which members of an occupied civilian population may be forcibly displaced from a given area by the Occupying Power. To qualify, it must be demonstrated that the displacement constituted an 'evacuation' conducted either to ensure the security of the civilian population or for reasons of military imperative. Both the establishment of protected humanitarian areas by the occupying forces in advance and taking subsequent measures to ensure and facilitate the return of displaced population are essential requirements for, and indicators of, such lawful evacuation. In the cases identified by BADIL such grounds are not present.

None of the West Bank-based instances of displacement considered in this report occurred during periods of concerted military conflict, meaning that such displacement was neither for the security of civilians nor of military imperative. In the case of Operation Protective Edge, although Israel's displacement of Palestinians inside the Gaza Strip did take place in the context of military hostilities Israel failed to establish protected humanitarian areas where those displaced could seek refuge nor did it provide humanitarian assistance, as is required under Article 49.

Additionally, none of the instances documented in this report indicate that such displacement was intended to be temporary: another requisite element of any legitimate evacuation. To the contrary, in the majority of cases documented by BADIL Israel has taken steps to perpetuate displacement and ensure that Palestinians cannot and do not return, either by demolishing their homes, refusing access or refusing essential services through the denial of permits or residency status.

No Requirement to Demonstrate Formal Plan to Transfer

In establishing state responsibility for the offence of forcible transfer, there is no requirement under international law to demonstrate a formal 'transfer plan' on behalf of the state, although in some cases such as the intended removal of several thousand Palestinian Bedouin from their homes and communities in Area C, Israel has indeed developed and made public such plans. Instead, it is sufficient to demonstrate that transfer was at least a possible consequence of the act or policy in question. Israeli acts and policies which include residency revocation, denial of access to basic services, home demolitions and the active targeting of civilians and civilian objects make it clear that forcible transfer was not only possible but likely. In fact, in many of these instances forcible transfer was explicitly intended.

Each case study, therefore, represents a *prima facie* grave breach of international law and confers a number of legal obligations.

Obligations of Israel as the Occupying Power

Israel, as the Occupying Power, must honor all its obligations under international law including those conferred by the Geneva Conventions and Customary International Humanitarian Law. Specifically, it must immediately cease all practices which contribute to the forcible transfer of members of the civilian population inside the occupied Palestinian territory, immediately facilitate the return of those Palestinians already transferred, and provide full compensation for all losses suffered.

Responsibilities and Obligations of Third Party States[11]

High Contracting Parties must honor their obligation under Common Article 1 of the Fourth Geneva Convention to take all available measures to halt Israel's perpetration of forcible transfer of Palestinians inside the oPt, and also search for individuals present in their respective territories who have materially participated in the forcible transfer of Palestinians. Under Article 146 of the Fourth Geneva Convention, such persons must either be brought before national courts under the principle of universal jurisdiction or be handed over to a fellow High Contracting Party so that they may be brought before a court of law. Failure to realize these obligations serves to critically undermine the legitimacy and relevance of international law and the people it seeks to protect.

The responsibilities and obligations of Third Party States are wider and not limited to judicial measures. The commission of internationally wrongful acts attributable to a state, in particular the commission of grave breaches identified by International Law and/or internationally recognized crimes, trigger not only the responsibility of that state, but also third party states' responsibilities and obligations. The third party states responsibilities and obligations are to ensure the state in breach respects and complies with international law and norms. This obligation should be carried out individually or collectively in accordance to provisions set by the UN Charter and a plethora of international treaties. Responsibilities of third party states could be met through a wide range of lawful means including, among others, non-recognition of the unlawful consequences of the wrongful acts, cessation of aid and assistance, imposition of military embargo, economic and/or diplomatic sanctions, and ensuring corporations and businesses commit to IHL and IHRL.

Actors Engaged with the Issues of Forced Displacement

There exists a clear and pressing need for improved understanding of forcible transfer among relevant actors, both in the theoretical sense and in the application of legal theory to the situation on the ground. Given the gravity of the consequences, it is imperative that instances of forcible transfer are swiftly recognised and addressed. All bodies working on the issue of forced displacement both inside the occupied Palestinian territory and in other contexts of international armed conflict must therefore ensure a working appreciation of the relevant legal framework and pursue its appropriate and consistent application. This would provide greater accountability regarding acts of forcible transfer already committed, and improved monitoring and documenting of future acts, as well as provide a deterrent against future actions.

[11] International Law Commission. *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*. Chapter III. 2001. Available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

Introduction

Palestinian refugees and Internally Displaced Persons (IDPs) are the largest and longest-standing case of displaced persons in the world today.[12] At the end of 2015, at least 7.98 million (66 percent) of 12.1 million Palestinians worldwide were forcibly displaced persons. Among them were:

- 6.14 million 1948 refugees and their descendants. This figure includes 5.09 million refugees registered with and assisted by the UN Relief and Works Agency for Palestine Refugees (UNRWA) and a further one million unregistered refugees;
- More than one million 1967 refugees and;
- 720,000 internally displaced persons on both sides of the Green Line (1949 armistice line).

These numbers reveal a simple truth: one cannot hope to understand – or indeed answer – the Israel/Palestine 'question' without an appreciation of the scale of the enduring forced displacement of Palestinians, or the means by which Israel has pursued and continues to pursue this displacement.

Indeed, the violence of the 1948 Nakba, during which some 750,000 Palestinians were forced from their homes and land, has been followed by multiple waves of forced displacement, with perhaps the most prominent example being Israel's invasion of the Gaza Strip and the West Bank, including East Jerusalem, in 1967. That invasion has subsequently transitioned into a deeply-entrenched, belligerent military occupation characterized by, *inter alia*, systematic and unlawful fracturing and acquisition of Palestinian land by the Israeli occupying forces for the purpose

[12] BADIL. *Survey of Palestinian Refugees and Internally Displaced Persons 2013-2015*, Volume VIII. Available at: http://www.badil.org/phocadownloadpap/badil-new/publications/survay/Survey2013-2015-en.pdf

of colonization; a scenario which former UN Special Rapporteurs and legal scholars alike have highlighted.[13]

The international crime of forcible transfer - revolving around the central concept of the unlawful forced removal of protected persons from a given area by an occupying power – is a key component in this process, as the displacement of the resident Palestinian population a 'necessary' precursor to the implantation of colonizers. It is a devastating act, inextricably linked to a multitude of deprivations of fundamental human rights and freedoms, including the right to life; health; self-determination; equality; adequate housing; sustenance; freedom of movement and freedom from discrimination.

Recent developments underscore the necessity of understanding and addressing forcible transfer. The opening months of 2016 saw acceleration in Israel's demolitions of Palestinian homes and other structures inside Area C of the West Bank. During the whole year of 2016, a total of 870 Palestinian structures were demolished or confiscated by Israeli forces, resulting in the forced displacement of 1,221 Palestinians. Those figures represent twice the respective totals recorded for 2015.[14] The issue is much broader, however, and as noted by OCHA, "[a]lthough Bedouin and herders in Area C bear the brunt of this pressure [to move], forcible transfer also takes other forms."[15] As this report highlights, Israeli-perpetrated forcible transfer of Palestinians is evident throughout the oPt and pursued through a range of policies.[16]

In 2016 Professor Richard Falk noted "much of the emphasis on forcible transfer has been concerned with the dynamics of Israeli settlers on occupied Palestinian territory in direct violation of Article 49(6) of the Fourth Geneva Convention"[17] rather than with the transfer of Palestinians which typically precedes such implantation; essentially focus has fallen upon transfer of population *into* a given area rather than transfer *out*. This lack of attention is demonstrated in the outcomes of several independent investigative processes. For instance, the Report of the United Nations

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[13] BADIL. 06.2015. *Israel's Forcible Transfer of Palestinian Bedouin: Forced Displacement as a Pillar of Colonialism and Apartheid*. Para. 29. Available at: http://www.badil.org/en/publication/press-releases/60-2015/4439-pr-en-1307155-25.html

[14] OCHA oPt. 30.12.2016. *Protection of Civilians Weekly Report. 13 – 26 December 2016.* Available at: http://www.ochaopt.org/content/protection-civilians-weekly-report-13-26-december-2016

[15] OCHA oPt. 04.2016. *Humanitarian Bulletin, occupied Palestinian territory. March – April 2016*. 2. Available at: http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2016_04_25_english.pdf

[16] BADIL. 03.2014. *Forced Population Transfer: The Case of Palestine, Introduction*. Working Paper No. 15. Available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/wp15-introduction.pdf

[17] Richard Falk. 2016. Foreword. *No Safe Place: Crimes Against Humanity and War Crimes Perpetrated by High-level Israeli Officials in the Course of "Operation Protective Edge"*. By BADIL Resource Center for Palestinian Residency and Refugee Rights. ix

Fact-Finding Mission on the Gaza Conflict[18] (also known as the *Goldstone Report*) fails to consider the specific crime of forcible transfer despite highlighting Israeli actions during the 2008/2009 operation 'Cast Lead' which would inevitably and unlawfully give rise to enduring forced displacement of Palestinians inside the Gaza Strip (including the targeting of civilians,[19] civilian objects[20] and denying sustenance to the civilian population[21]), East Jerusalem (effecting 'silent transfer' of Palestinian communities[22]) and the West Bank (colony expansion, land expropriation and the demolition of Palestinian villages[23]).

The result is a diluted understanding of the reality on the ground, resulting in a diminished prospect of holding to account the perpetrators of grave breaches of the Fourth Geneva Convention and delivering justice to the victims of such breaches. This, in turn, severely undermines the legitimacy and relevance of international law.

Another example is the UN-mandated Independent Commission of Inquiry on Gaza 2014 whose report focused on the case of Operation Protective Edge. The report failed to consider the legal implications of Israel's forced displacement of more than half a million Palestinians inside the Gaza Strip during this assault, with over 100,000 Palestinians remaining displaced at the time of writing. When the issue of forcible transfer of Palestinians by Israel as per Article 49(1) *has* been addressed, it has typically been to highlight individuals and communities 'at risk' of such transfer, rather than identifying those whom have already become victims. Given the scale of the displacement, the devastating impact on those affected, it coming as a direct result of apparent Israeli policies (all features which the report of the Commission of Inquiry identified) and the fact that specific acts of forced displacement qualify as war crimes or crimes against humanity, the failure to apply the framework of International Humanitarian Law here is a truly dangerous and inexplicable oversight.

Why is this the case? During conversations conducted during the second half of 2015 with relevant individuals and organizations, BADIL identified a critical factor which has contributed to this unacceptable scenario: there exists among key actors, including sovereign states, regional bodies, UN agencies and organs, and international non-governmental organizations, a lack of clarity as to the technical workings or operating legal framework of forcible transfer. In an attempt to address this issue, BADIL and expert partners began a process of gathering jurisprudence and scholarly comment on forcible transfer so as to allow for the construction of a comprehensive and authoritative legal framework. In early 2016 this framework was

[18] UN Human Rights Council. 09.2009. *Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48. Hereafter, '*Goldstone Report*'. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf

[19] Ibid. Section XI

[20] Ibid. Section XIII

[21] Ibid. Paras. 913-937

[22] Ibid. Paras. 1535-1537

[23] Ibid. Paras. 1538-1539

finalized and has since been presented to a wide range of audiences, with a view to developing the ability of the aforementioned key actors to identify instances of forcible transfer inside the oPt and ultimately promote accountability for perpetrators and justice for victims.

Encouraging progress has been made in this regard, particularly among UN bodies and third party states. For instance, a January 2016 report from the then UN Secretary General, Ban Ki-moon, revealed a far more thorough appreciation of forcible transfer, particularly in relation to Israel's creation of coercive living environments inside the oPt which present Palestinians with no choice but to leave their areas of residence. Furthermore, the report correctly separates discussion of forcible transfer from any requirement for a formal 'transfer plan' on behalf of the Occupying Power, which should be considered a significant and overdue step towards recognizing past and ongoing instances of Israeli-perpetrated forcible transfer.

This document is therefore intended to assist in the process of recognition, contributing to an improved understanding of forcible transfer among relevant actors both in the theoretical sense and in the application of the legal theory to the situation on the ground inside the oPt. To this end it contains a legal framework for forcible transfer as per Article 49(1) of the Fourth Geneva Convention, followed by a selection of case studies collected by BADIL which highlight not only the geographic spread of Palestinian individuals and communities affected by forcible transfer - spanning the oPt in its entirety - but also a broad range of acts, practices and policies attributable to the Israeli occupying forces which underpin such transfers.

Though this report is not intended as a comprehensive account of such policies or as a formal indictment, it does provide a solid evidence base for a finding that not only are Palestinians still at grave risk of forcible transfer, pursued through a wide range of Israeli policies, but that **Israeli-perpetrated forcible transfer of Palestinians is happening today**. As such, this report provides the impetus for further research into the forcible transfer of Palestinians. It should also serve as a clarion call for the international community to acknowledge that, in forcibly transferring members of an occupied civilian population, Israel has perpetrated and continues to perpetrate a grave breach of the Fourth Geneva Convention. Accordingly, third party states and all relevant actors must acknowledge this and fully perform those obligations conferred by such acknowledgement under international law.

1 Chapter One

Methodology

Chapter 1
Methodology

Building the legal framework

1. As previously outlined, an essential aspect of improving understanding among relevant actors of forcible transfer is the production of a clear and authoritative legal framework for the offence of forcible transfer, as per Article 49(1) of the Fourth Geneva Convention.
2. This was pursued by BADIL through extensive desk-based review of existing law, including commentary from the International Committee of the Red Cross on Article 49 and jurisprudence of International Criminal Law. Although the Geneva Conventions concern state responsibility rather than individual criminal responsibility, forcible transfer has been considered at some length by international criminal tribunals and such jurisprudence is therefore instructive in developing understanding of the technicalities of the offence. To this end, judgments from the trial and appeal chambers of the International Criminal Court (ICC), International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) were extensively reviewed and their rationale incorporated into the framework. In addition, as part of the drafting process, BADIL actively sought out independent legal opinion from respected experts in the field of International Humanitarian Law so as to address any areas where additional clarity was required.
3. To complete this review process, in late 2015 BADIL brought together legal representatives from a variety of leading Palestinian and international organizations working in the field of Israel and Palestine, and presented a working draft of the framework through a roundtable discussion. Feedback was collated both during the session itself and over the following months before

being incorporated into the working draft. A revised draft was then circulated among, and accepted by, the group in February 2016 to arrive at the final framework presented here. The result is a robust, consensus-driven framework, rooted firmly in established legal precedent and against which Israel's actions inside the oPt can be objectively assessed.

Field Research in the West Bank, including East Jerusalem

4. In January 2016, BADIL issued a call to partners for prospective cases of forcible transfer throughout the entirety of the West Bank, including East Jerusalem. These partners were chosen on the basis of their extensive knowledge of the field and included humanitarian agencies, human rights organizations and community-based activists.

5. Specifically, partners were asked to supply details of known instances whereby Palestinian individuals, families or communities had been displaced from their places of ordinary residence, ostensibly on account of practices or policies attributable to the Israeli occupying forces. As this research project is primarily focused on exploring the contemporary presence of forcible transfer inside the oPt, partners were requested to restrict submitted instances of displacement to those which had taken place since 1 January 2012. This initial collection phase was largely completed by early February 2016, with some 40 cases received during this time.

6. These cases were then screened by way of telephone calls with those persons affected. All calls were conducted by BADIL staff during February 2016 with the aim of verifying the information provided by partners. In-person interviews were then scheduled in instances for which there appeared to exist a *prima facie* case of forcible transfer, though due to logistical constraints, it was not possible to conduct interviews with all *prima facie* cases identified. Cases were therefore prioritized for interview on the basis of their ability to highlight the geographic scope of forcible transfer inside the oPt, as well as the variety of means through which such transfer is pursued.

7. During this screening process, cases were excluded if they failed to fall within the set timeframe, if the initial information proved inaccurate or if the provided cases pertained to persons *at risk* of forced displacement, rather than those whom had already been displaced. It is important to note that for many of those cases excluded, based on information received during the screening process, the forced displacement of the individual(s) concerned appeared imminent, and would likely constitute forcible transfer should the displacement in question take place. In addition, some individuals that appeared to be victims of forcible transfer opted not to participate in formal interviews due to a fear of retribution from Israeli officials, military forces and/or colonizers.

8. In total, 11 interviews were completed, with the majority conducted in person by BADIL staff between March and August 2016, often at the current post-transfer

location of the person(s) concerned, while a small number of additional cases were conducted by local partners. In some cases, BADIL staff were unable to conduct interviews at the current post-transfer location as doing so posed a greater risk of retribution or harassment to the interviewee. For example, while conducting interviews in Hebron, BADIL field researchers were the subject of stone-throwing and verbal abuse from members of the Israeli colonizer community.

9. Interviews were conducted in a semi-structured format, in accordance with a research guide produced by BADIL for the specific purpose of recording instances of forcible transfer.[24] Interviews were documented through a combination of audio, video and photographic mediums. The collected testimonies were then transcribed, translated and cataloged internally by BADIL staff. During both the screening process and face-to-face interviews, all participants were given a verbal explanation as to the research purpose and process, and their rights as participants. In addition, all interview participants were offered full anonymity. Not all interviews are reproduced in this report.

Field Research in the Gaza Strip

10. In the aftermath of Israel's large-scale military assault upon the Gaza Strip in the summer of 2014, codenamed "Operation Protective Edge", BADIL conducted a three-month field study with a view to understanding the extent and legality of the mass forced displacement of Palestinians directly resulting from the warfare practices employed by Israel during the operation.[25] To this end, two three-person research teams (each consisting of a journalist, lawyer and professional researcher) were deployed to the field, overseen by a central Research Coordinator. All members of the research teams and the Research Coordinator were drawn from Palestinian residents of the Gaza Strip. Each team was assigned a respective geographic jurisdiction, with one team focusing on the North of the Gaza Strip, and the other focusing on the South eastern and central areas.

11. The research teams acted upon a brief to interview Palestinian residents of the Gaza Strip forcibly displaced from their homes and communities as a direct result of Israeli military actions during Operation Protective Edge. Interviews were intended to develop an understanding of the specific factors which caused this displacement, and the impact which such displacement had on individuals, families and communities. A total of 90 interviews were conducted, accounting for 139 individual adult interviewees (105 male and 34 female). All interviews were conducted between 20 September 2014 and 5 December 2014.

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[24] See Appendix I

[25] For further information on BADIL's research into Israel's forcible transfer of Palestinians in the Gaza Strip, see BADIL. 02.2016. *No Safe Place: Crimes Against Humanity and War Crimes Perpetrated by High-level Israeli Officials in the Course of "Operation Protective Edge"* (hereafter *'No Safe Place'*). Available at: http://www.badil.org/en/publication/press-releases/77-2016/4557-pr-en-210316-13.html

Chapter Two

A Legal Framework for Forcible Transfer

Chapter 2

A Legal Framework for Forcible Transfer

12. Forced displacement is not, *per se*, unlawful, with international legal instruments allowing for instances whereby an individual's right to remain lawfully in a given area may be legally compromised in pursuit of greater public benefit. Such instances are often associated with large-scale development projects, such as the construction of dams or road infrastructure. However, in the context of international armed conflict, particularly strict provisions are in place regarding the forced displacement of protected persons, reflecting the acute vulnerabilities of such persons during times of conflict.

13. Specifically, in a situation of military occupation, Article 49 of the Fourth Geneva Convention[26] and Rule 129 of Customary International Law[27] strictly prohibit an occupying power from forcibly transferring[28] the civilian population of an occupied territory. The drafting of this provision, which was informed by the Nazi occupation of large tracts of European territory during World War

[26] International Committee of the Red Cross (ICRC). "Fourth Geneva Convention". Article 49

[27] International Committee of the Red Cross (ICRC). "Customary IHL - Rule 129. The Act of Displacement". Available at: http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule129

[28] 'Forcible transfer' pertains to the forced displacement of individuals of communities *within* a de jure or de facto national border. Article 49 also covers situations of deportation, characterized by the forced displacement of individuals *across* such borders. See ICTY. Prosecutor v Krstić. Case No.IT-98-33-T. Trial Judgement (hereafter '*Krstić*'). 02.08.2001. Para. 521; ICTY. Prosecutor v Naletilić & Martinović. Case No.IT-98-34-T. Trial Judgement. 31.03.2003. Paras. 516-521, 670; and ICTY. Prosecutor v Simić et al. 2003. Case number IT-95-9-T. Trial Judgement. (hereafter '*Simić*') Para. 122

II, is robust and unequivocal, prohibiting individual or mass forcible transfer "regardless of motive". Contravening this law constitutes a grave breach of the Fourth Geneva Convention under Article 147,[29] as well as a war crime[30] and, potentially, a crime against humanity under the Rome Statute of the ICC.[31] The gravity of the act of forcible transfer is further demonstrated in its inclusion by the Committee against Torture in the list of issues submitted to Israel in July 2012, where Israel's planned forcible transfer of Palestinian Bedouin communities was explored under Article 16 of the Convention, which concerns cruel, inhuman or degrading treatment or punishment.[32]

14. In seeking to identify instances of forcible transfer, jurisprudence of the ICTY[33] has identified the following requisite elements:

    i. The forced displacement of protected persons by expulsion or other forms of coercion;

    ii. From areas in which they were lawfully present[34] (though remaining within a national border[35]);

    iii. The removal taking place without grounds permitted by international law.

The Concept of 'Force'

15. It should be noted that the 'forcible' dimension of the displacement in question is interpreted broadly, and "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 such person or persons or another person, or by taking advantage of a coercive environment."[36]

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[29] In addition, Article 147 of the Fourth Geneva Convention also lists "the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" as a grave breach of the Fourth Geneva Convention. This is a crime commonly associated with forcible transfer

[30] Rome Statute. Article 8(2)(b)(viii)

[31] Rome Statute. Article 7(1)(d)

[32] Committee against Torture. 12.07.2012. *List of issues prepared by the Committee prior to the submission of the fifth periodic report of Israel (CAT/C/ISR/Q/5), adopted by the Committee at its forty-eighth session, 7 May–1 June 2012*. Para. 47

[33] See ICTY, Prosecutor v. Popović et al. 2010. Case Number IT-05-88 -T, Trial Judgment, (hereafter '*Popović et al*'). Para. 891

[34] 'Lawful presence' is to be interpreted broadly. See *Popović et al*. Para. 900: "Clearly the protection is intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community. In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for "residency" to be demonstrated as a legal standard."

[35] *Popović et al*. Para. 892

[36] The Rome Statute Elements of Crimes. Article 6(e)

The vital element is that the displacement in question be *involuntary*. That is to say that the "relevant persons had no real choice."[37] In *Simić*, it was held that:

> [I]n assessing whether the displacement of a person was voluntary or not, [the Court] should look beyond formalities to all the circumstances surrounding the person's displacement, to ascertain that person's genuine intention."[38] [This includes] threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will.[39]

16. In *Krajišnik*, it was found that measures including "dismissals from employment, house searches, and the cutting off of water, electricity, and telephone services" all contributed to the intentional creation of an environment in which it was "practically impossible [for the civilian population] to remain."[40]

Consent

17. Awareness of the wider operating context is also crucial in cases of so-called 'consent' to leave an area, and such consent may be rendered "valueless" in light of the environment in which that 'consent' is given.[41] This logic was developed in the case of *Blagojević & Jokić*:

> Even in cases where those displaced may have wished - and in fact may have even requested - to be removed, this does not necessarily mean that they had or exercised a genuine choice. The trier of fact must consequently consider the prevailing situation and atmosphere, as well as all relevant circumstances, including in particular the victims' vulnerability, when assessing whether the displaced victims had a genuine choice to remain or leave and thus whether the resulting displacement was unlawful.[42]

The Issue of 'Distance' of Transfer

18. In *Simić*, the Trial Chamber noted that "among the legal values protected by deportation and forcible transfer are the right of the victim to stay in his or her home and community and the right not to be deprived of his or her property by being forcibly displaced to another location. Therefore, the Trial Chamber finds

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[37] ICTY. Prosecutor v Krnojelac. 2002. Case number IT-97-25-T. Trial Judgement. Para. 475; Case number IT-97-25-A. Appeal Judgement. Para. 233

[38] *Simić*. Para. 126

[39] Ibid. Para. 126

[40] ICTY. Prosecutor v. Krajisnik. 2006. Case number IT-00-39-T. Trial Judgement. (hereafter '*Krajisnik*'). Para. 729

[41] *Krstić*. Para. 529

[42] ICTY. Prosecutor v. Blagojević. 2005. Case number IT-02-60. Trial Judgement. (hereafter '*Blagojević*'). Para. 596

that the location to which the victim is forcibly displaced is sufficiently distant if the victim is prevented from effectively exercising these rights."[43] Thus, in considering whether a given forced movement may support a finding of forcible transfer, assessment must steer away from considerations of 'distance', and instead consider the movement in terms of its impact upon the ability of the affected person(s) to exercise relevant rights.

Grounds Permitted Under International Law

19. Though the prohibition of forcible transfer under the Fourth Geneva Convention and other legal instruments is robust, as with instances of peace-time forced displacement, international law does, however, provide limited grounds under which members of an occupied civilian population may be forcibly displaced from a given area by the Occupying Power. Such grounds are stipulated by Article 49(2) of the Fourth Geneva Convention, which holds that for an exception to the prohibition on forced displacement to be established, it must be demonstrated that this displacement constituted an 'evacuation' conducted either to ensure the security of the civilian population, or for reasons of military imperative.

20. 'Security of the population' pertains to scenarios in which "an area is in danger as a result of military operations or is liable to be subjected to intense bombing",[44] or where an evacuation is required for "humanitarian reasons",[45] while 'military imperative' pertains to scenarios in which the presence of the civilian population hampers military operations and this population must therefore be relocated. "Evacuation is only permitted in such cases, however, when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate",[46] and 'military necessity/ imperative' refers to the necessity of the warring parties to acquire victory. To this end, the burden of proof lies with the party seeking to invoke this exception, and this burden "is increased for the suspension of any rules exempting targets from attack; and an especially enhanced burden of proof applies in the case of suspension from humanitarian rules."[47] As highlighted in *Popović et al*, "it is unlawful to use evacuation measures based on imperative military reasons as a pretext to remove the population and effectuate control over a desired territory."[48]

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[43] *Simić*. Para. 130

[44] Jean S. Pictet. International Committee of the Red Cross (ICRC). 1958. *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Vol. 4. 280

[45] *Blagojević*. Para. 600

[46] Jean S. Pictet. International Committee of the Red Cross (ICRC). 1958. *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Vol. 4. 280

[47] Ingrid Detter De Lupis. 1987. *The Law of War.* Cambridge University Press. 443

[48] *Popović et al*. Para. 901

21. Of critical importance is the understanding that 'evacuation' refers to a temporary period of displacement,[49] and "persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."[50] Accordingly, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption, while the reference to cessation of hostilities would appear to restrict the exemption to instances of concerted military conflict, rather than situations of 'low intensity' occupation where the paradigm of law enforcement - rather than that of conduct of hostilities - is applicable.

22. In addition, as per Article 49(3), the Occupying Power "shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated."[51]

The Need to Demonstrate Plan or Purpose

23. In any assessment of state responsibility for forcible transfer as per the Fourth Geneva Convention (in contrast to consideration of individual criminal responsibility for forcible transfer under International Criminal Law),[52] there exists no requirement to demonstrate intent understood as *mens rea*.

24. Although Article 49 prohibits transfers 'regardless of motive', an interpretation of forcible transfer which makes no requirement that the circumstances in question were created to make people leave a given area would prove problematic in terms of causation; i.e. such an interpretation would automatically render any violation inside the occupied territory which prompts an individual to leave as an act of forcible transfer. Though such a definition cannot be discounted, during the expert roundtable discussion it was concluded that a stronger argument can perhaps be made for an interpretation whereby there must be demonstrated on behalf of the Occupying Power a plan or purpose to affect the transfer of members of the occupied population.

25. It was agreed that this plan or purpose need not be formally stated, but may be reasonably inferred from the facts. That is to say that the transfer must objectively be seen by the Occupying Power as one of the possible consequences of the act(s) in question. In this regard, the concept of 'intent' for the purposes of Article 49 of the Fourth Geneva Convention should be considered as similar to that of *dolus eventualis* in International Criminal Law.

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[49] *Blagojević*. Para. 600

[50] International Committee of the Red Cross (ICRC). "Fourth Geneva Convention". Article 49

[51] Ibid.

[52] For a consideration of the requisite standard of intent for forcible transfer under International Criminal Law, see *No Safe Place*. Paras. 83-88

Legal Obligations of Third Party States

26. Forcible transfer is an act which confers legal obligations on third party states, with Common Article 1 of the Geneva Conventions stipulating that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances". Commentary of the International Committee of the Red Cross develops this provision further, concluding that Common Article 1 is "generally interpreted as enunciating a responsibility on third States not involved […] to ensure respect for international humanitarian law by the parties to an armed conflict by means of positive action. Third Party States have a responsibility, therefore, to take appropriate steps - unilaterally or collectively - against parties to a conflict who are violating international humanitarian law, in particular to intervene with states or armed groups over which they might have some influence to stop the violations."[53]

27. According to the Fourth Geneva Convention under Article 146, Third Party States are obligated to search for individuals present in their respective territory who have materially participated in the forcible transfer of Palestinians and to either bring proceedings against such persons in their national courts under the principle of universal jurisdiction, or hand over such persons to a fellow High Contracting Party so that they may be brought before a court of law.

28. Third party states' responsibilities and obligations ensure that the state committing grave breaches identified by International Law and/or internationally recognized crimes, respects and complies with international law and norms. The ongoing forcible transfer of the Palestinian people by Israeli policies and actions, should trigger these responsibilities which could be met through a wide range of lawful means including, among others, non-recognition of the unlawful consequences of the wrongful acts, cessation of aid and assistance, imposition of military embargo, economic and/or diplomatic sanctions, and ensuring corporations and businesses commit to IHL and IHRL.

29. Furthermore, as a grave breach of the Fourth Geneva Convention and thus one of the most heinous classifications of acts committed during periods of armed conflict, High Contracting Parties are obligated to search for individuals alleged to have committed – or ordered to be committed – acts of forcible transfer, and to bring such persons before a domestic court or, alternatively, to deliver such persons to another High Contracting Party so that they may be brought before a court of law.[54]

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[53] International Committee of the Red Cross (ICRC). June 2004. *Improving Compliance with International Humanitarian Law*. 3. Available at: https://www.icrc.org/eng/assets/files/other/improving_compliance_with_international_humanitarian_law.pdf

[54] International Committee of the Red Cross (ICRC). "Fourth Geneva Convention". Article 146

Chapter Three

Forcible Transfer in Hebron

Chapter 3
Forcible Transfer in Hebron

30. Hebron (*Al-Khalil* in Arabic) is the largest city in the southern West Bank with a population of 208,000-215,000 residents,[55] the majority of whom are Palestinian Arabs. Hebron has long been a hub for trade and commerce,[56] today accounting for roughly one third of the West Bank Gross Domestic Product (GDP).[57]

31. Hebron, alongside East Jerusalem, is one of two cities in the oPt where Israeli colonies are located within the city itself, specifically in and adjacent to the area of the Old City. There are five such colonies - Beit Hadassah, Abraham Avinu, Beit Romano, Tel Rumeida, and al-Rajabi house - with the first, Beit Hadassah, established in 1979. Though the total number of colonizers inside Hebron varies according to the source,[58] estimates range between 450 and 800 persons.[59] In addition, a large contingent of Israeli soldiers, border police and other personnel are detailed to these colonies to maintain their presence.[60]

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[55] The Palestinian Central Bureau of Statistics. *Localities in Hebron Governorate by Type of Locality and Population Estimates, 2007-2016*. Available at: http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/hebrn.htm

[56] Ma'an Development Center. 2008. *Hebron Destroyed From Within Fragmentation, Segregation and Forced Displacement*. 5

[57] TIPH. *Hebron Today*. Available at: http://www.tiph.org/hebron/

[58] The exact number of colonizers has not been made public. Moreover, the number fluctuates, since some of the residents in the colonies are yeshiva students or foreign visitors.

[59] Amnesty International. 25.02.2016. *Israeli authorities must end collective punishment of Palestinians in Hebron, protect human rights defenders in the city*. 5. Tawfiq Jahshan, Hebron Rehabilitation Center lawyer. 23.03.2016. Interview. Sarah Adamczyk. Norwegian Refugee Council. 07.2013. *Driven Out: The Continuing Forced Displacement of Palestinian Residents from Hebron's Old City*. 12

[60] Amnesty International. 25.02.2016. *Israeli authorities must end collective punishment of Palestinians in Hebron, protect human rights defenders in the city*. 5

32. Under the terms of the 1997 Hebron Protocol, signed by Israel and the Palestinian Liberation Organization, Hebron was divided into two administrative areas: 'H1' and 'H2'. The former, inhabited at the time by roughly 140,000 Palestinians, was assigned to the control of Palestinian authorities, while control of H2 – in which 30,000 Palestinians and the aforementioned Israeli colonies are located - was to be retained by the Israeli occupying forces.[61] Subsequently, Israel implemented a range of severe restrictive and discriminatory policies in and adjacent to H2, creating a uniquely coercive environment for Palestinian residents of Hebron; an environment which has resulted in significant forced displacement.

33. During the Second Intifada (2000 – 2005), the Israeli army expanded their policies in the Old City to all of Hebron. This included countless movement restrictions on Palestinians by military checkpoints, fatal enforcement of curfew and the closure of main streets to Palestinian residents,[62] with the latter creating what is now widely known as the 'ghost town' area of Hebron.

34. In 1994, following the murder of 29 Palestinians by an Israeli colonizer in the Ibrahimi Mosque/Cave of Patriarchs, Israeli authorities closed Shuhada Street, a busy thoroughfare, to Palestinian vehicular access. Later, most of this same street was also closed to Palestinian pedestrian movement following the outbreak of the Second Intifada in 2000. Additionally, about 480 shops and businesses along the street including two gas stations were shut down by military orders, which are periodically renewed.[63] This closure of Shuhada Street is 'justified' by the Israeli occupying forces as a means of protecting the resident colonizer population. According to OCHA:

> The harsh access restrictions have forced the vast majority of Palestinians living along the street to abandon their homes and be displaced elsewhere. The few families that remained face difficult living conditions. While some of them are exceptionally allowed to use a small section of the street to enter their homes, other families must rely on back entrances or their neighbours' rooftops to enter their homes. As a result, otherwise normal activities, such as bringing home foodstuff or furniture, became complicated operations; receiving visitors became almost prohibitive. […] Children living nearby, who attend one of the three schools along, or adjacent to, Shuhada street, must pass through checkpoints daily and undergo searches. […] Additionally, Palestinians living along the street are constantly exposed to settler intimidation and harassment. As in other West Bank areas, the majority of complaints filed with the Israeli Police are closed without indictment. This

[61] For more information on the decline of the Palestinian population in the Old City of Hebron see: BADIL. 08.2016. *Forced Population Transfer: the Case of Old City of Hebron, op. cit.*

[62] B'Tselem and ACRI. 2007. *Ghost Town*. 11. Available at: http://www.acri.org.il/pdf/ghosttown.pdf

[63] OCHA oPt. 02.2013. *Humanitarian Monitor Monthly Report*, 10. available at: https://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_03_25_english.pdf

is often exacerbated by frequent military operations carried out by the army, which include home searches, questionings and arrests.[64]

35. The scale of the resulting displacement is vast. A survey conducted in neighborhoods of H2 revealed that Palestinians vacated more than 1,014 Palestinian housing units. This number represents some 42 percent of the housing units in the Old City, with 659 of these housing units becoming vacant during the Second Intifada. However, as the authors of the survey acknowledged, the number of homes vacated is in fact higher than the survey figures suggest, as Palestinian families unable to afford rent in other parts of the city often moved into freshly vacated homes. Such homes were not recorded in the survey's findings.[65]

36. In regard to the impact of Israeli policies upon commercial operations in Hebron, since 2007, 1,829 Palestinian businesses in the vicinity of Israeli colonies were closed by army directive or on account of severe movement restrictions employed by the Israeli occupying forces. This number represents around 78 percent of all businesses in the Old City. During the Second Intifada, 1,141 of these businesses were closed, including at least 440 which were closed in accordance with Israeli military orders.[66]

37. A natural consequence of such actions is the devastation of Palestinian livelihoods and increased unemployment in the affected areas: a 2009 report from the International Committee of the Red Cross found that 77 percent of Palestinians in the H2 area were living below the poverty line.[67] In 2003, the deputy commander of the Israeli Hebron Brigade disclosed that Israel's collective economic punishment of Palestinians was an official policy, stating that "the economic burden is not incidental, it is part of a long process to pressure the residents of Hebron to get them to rid themselves from the terror in their midst".[68]

38. Late 2015 witnessed a marked escalation in protest and unrest throughout the West Bank, with Hebron becoming a noted flashpoint. Since 1 October 2015, 20 Palestinians have been killed by Israeli forces in the Old City of Hebron or in close proximity to its colonies,[69] with a number of these killings identified

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[64] Ibid. 10

[65] B'Tselem, 01.2011. *Hebron City Center.* Available at: http://www.btselem.org/hebron

[66] B'Tselem and ACRI. 2007. *Ghost Town*. 14

[67] TIPH. *Hebron Today*. Available at: http://www.tiph.org/hebron/

[68] B'Tselem and ACRI. 2007. *Ghost Town*. 39. (quoting Yoman, Israeli Channel One Television. 07.02.2003)

[69] Amnesty International. 25.02.2016. *Israeli authorities must end collective punishment of Palestinians in Hebron, protect human rights defenders in the city*. 4

by Amnesty International as constituting extra-judicial executions.[70] Human rights groups have also claimed that, since late 2015, Israel has implemented an unlawful 'shoot-to-kill policy' in the course of its law enforcement activities within the oPt, including in Hebron.[71] Colonizer violence and harassment have also come to characterize the Palestinian experience in Hebron, with "settler attacks on Palestinians and their properties an almost daily occurrence" inside H2.[72]

39. Further, since 1 November 2015, the Tel Rumeida area and neighboring Shuhada Street have been declared a 'closed military zone' by the Israeli occupying forces. This closure was initially implemented for a period of one month, but was then subject to an ongoing extension[73] until late May 2016. At the time of writing this report, this closure remains partially in place.[74] By November 2015, across H2 as a whole there were 95 physical obstacles in situ including 19 permanently staffed checkpoints.[75]

40. As such, a demonstrably coercive environment which had already effected the forced displacement of many Palestinian individuals and families from H2, has become even more so, with either those Hebron residents who have thus far remained in their homes now under increased pressure to leave, or those who are unable or unwilling to return to their homes. This pressure results from seemingly well-founded fear of violence and harassment from colonizers and/or suppression by Israeli military forces or personnel, as well from the grave social and economic consequences of other acts and policies attributable to the Israeli occupying forces.

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[70] Amnesty International. 27.10.2015. *Israeli forces in Occupied Palestinian Territories must end pattern of unlawful killings*. Available at: https://www.amnesty.org/en/latest/news/2015/10/israeli-forces-must-end-pattern-of-unlawful-killings-in-west-bank/ and Amnesty International, 12.11.2015. *Israel/OPT: Investigate apparent extrajudicial execution at Hebron hospital*. Available at: https://www.amnesty.org/en/latest/news/2015/11/israel-opt-investigate-apparent-extrajudicial-execution-at-hebron-hospital/

[71] Al Haq. 31.10.2015. *Unlawful Killing of Palestinians by Israeli Occupying Forces*. Available at: http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/982-unlawful-killing-of-palestinians-by-israeli-occupying-forces

[72] Ma'an News Agency. 05.05.2016. *Israeli settlers attack Palestinian activist in Hebron*. Available at: https://www.maannews.com/Content.aspx?id=771399

[73] Al-Khalil Team, International Solidarity Movement. 06.02.2016. *Closed military zone in Shuhada Street and Tel Rumeida extended yet another month*. Available at: http://palsolidarity.org/2016/02/closed-military-zone-in-shuhada-street-and-tel-rumeida-extended-yet-another-month/

[74] Ma'an News Agency. 19.05.2016. *Israeli army ends closed military zone in Hebron's Tel Rumeida*. Available at: https://www.maannews.com/Content.aspx?id=771562

[75] OCHA oPt. 11.2015. *Humanitarian Bulletin occupied Palestinian territory*. 4. Available at: http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_12_11_english.pdf

Case Study #1:
Kifah al-Muhtaseb | Hebron |
transferred in December 2015

Coercive environment created by:

Financial and social implications of movement restrictions; harassment/violence from colonizers; fear for safety of family members

I was born in the Old City of Hebron. I am 50 years old, and worked in construction from the age of 13 until I turned 40. I then became ill and after that I decided to open a minimarket in my house, which was previously a guestroom. We own the house; my 7 brothers, 3 sisters, mother, stepmother, and I inherited this house. Everything was going great for 4 or 5 years, as there were no borders or checkpoints at that time. But after [the Israelis] created these borders, I started to face many difficulties. Whenever I wanted to bring goods to my minimarket, the soldiers on the borders wouldn't allow me.

Whenever I saw Palestinian boys and girls being arrested or beaten by the Israeli soldiers I would defend them, as I can't remain silent. One day, a new female Israeli soldier, who I hadn't seen before, told me that she was targeting me and that she wouldn't allow me to bring goods to the minimarket. I told her, "Do it if you can. I'll enter the goods whether you like it or not." The next day she didn't allow me to enter my goods.

Therefore, I had to coordinate with NGOs and the Palestinian Civil Liaison to be able to enter goods. The same soldier told me that I won the case that time, but the next time I would not. After a while, I was surprised to find my name listed on the border; "Kifah al-Muhtaseb is not allowed to enter goods". I once spoke with an Israeli police officer at the Abu el-Reesh checkpoint and asked him why I was not allowed to enter goods. He said it was because I was defending the children. He also told me not to defend any girl who was not my sister or daughter. I told him that everyone who enters the neighborhood are my sons and daughters. He said he couldn't do anything for me.

I started to face huge difficulties bringing in the goods. How can I carry 10 rice bags [30 kilogram each]? On my shoulders? I started to reduce the amount of the goods I kept in stock. Later on, I stopped replacing goods when they ran out. I was very depressed as I couldn't bring in enough goods and couldn't pay the sellers who had sold me the remaining goods. There was no money to buy my children anything. I was too depressed that I told my sons to open the minimarket after they come back from school. I checked my debts and it turned out that I had 11,000 shekels of debt, and that the money I lent to people was no more than 3000 shekels. The goods I

owned were valued around 2000 shekels, so I told my children to do whatever they wanted with it; they can use it or they could close the minimarket.

It's also very difficult to bring construction tools and materials to the neighborhood. I suffered before when they allowed me to bring only 20 small concrete blocks. They can prevent you from bringing anything when you cross the border, even if that thing was a bag of flour. Of course, the settlers can build whenever they want and they have the materials and the tools ready for them.

In the past, there were no borders or checkpoints so I used to drive freely in the neighborhood and park my car in front of the house. It didn't matter if I locked the car or not because the neighborhood was safe. I have now been prevented from bringing my car into the neighborhood for more than 12 years, unless we have an emergency, but in that case we need to coordinate [with the Israelis]. The settlers can drive their cars in the neighborhood, though.

I became afraid for my children. One of the Israeli police officers once told me: "if you don't feel afraid for yourself, you should be afraid for your children." It was threatening, as I knew my sons wouldn't remain silent if they saw their father being discriminated against. My fear had grown, which made me decide to find my family a home outside the Old City.

No one would come to visit us. People feared to come here and I don't blame them. My mother used to visit us because she was an old woman and no danger threatened her. As for my brothers and sisters, I had to meet them at the border in order to tell the soldiers that they were coming with me. I didn't just feel isolated; I felt like I was forgotten. No one cares about us; not organizations, the municipality or the Palestinian Authority. Although I didn't have much money, I used to take my daughters to visit their relatives, especially their grandmother. I didn't want them to be sad and feel like they are alienated of this world. All of these circumstances forced me to take my family outside the Old City.

As life has become tough, I bought a house in Farsh el-Hawa [roughly 5km from Hebron's Old City] for my wife and children. They have been living in it since early December, 2015.

All of my brothers, my mother and sisters, also left the house because of the curfews. When they wanted to visit, I used to tell them not to come because it's dangerous. My wife and daughters don't visit this area at all. I remain worried about my wife and children because I don't live with them. As soon as I leave their house, they call to check on me. They too are worried about me.

I'm 10 minutes away from family, yet I get to see them in the weekends only. This is not life. I can't move and live with my family because I can't leave the house and my sister. Her children are still too young. If I left the house, the settlers would break into it and take it. One night, they took my neighbor's house and raised the Israeli flag over it; they claimed it was sold to a Jewish Israeli.

At the current time, all of the young people find difficulty getting married. On one hand, if a guy wanted to engage a girl from the Old City, his parents would remain worried about him; they'd think how he would go to visit her, and if he'd get assaulted, arrested or killed. Thus, men refuse to engage with our daughters. The name of the Old City has become a poison to people. On the other hand, if one of our sons wanted to engage a girl living outside of the Old City, the girl and her parents would refuse for the same reason. A month after my family moved to Farsh el-Hawa, my young daughter got engaged. People came to ask for my elder daughter's hand yesterday. When they were living in the Old City only drug addicts wanted to marry them.

Case Study #2: Rajab Obaido | Hebron | transferred in 2004 and late 2015

Coercive environment created by:

Harassment/violence from Israeli forces and colonizers; fear for safety of family members; social and economic implications of movement restrictions

I used to live in Qaitoun Street in Hebron, which is in H2 now. During the Second Intifada, I was once on the way home when six soldiers stopped me and asked: "Which one do you want us to break for you: your arm or your leg?" I replied: "Do whatever you want!" One of the soldiers asked me where I lived. I said that I lived a few meters away. My wife usually locked the door of the home, but luckily, that night, the door was unlocked. I opened the door and they left me alone. If the door hadn't been open, the soldiers would have broken either my arm or my leg. My children were scared of the soldiers' harassment, so they wanted to leave the area.

In 2004, when I realized how bad the situation was, I decided to leave the neighborhood. Some people told us about an empty home in Tel Rumeida, which is in H2. They told me that I must be a brave man if I wanted to live in that home because the last person who lived in it fled after 15 days, as the soldiers kept invading his home. "Will you be able to handle this situation?" the owner of the home asked me. I replied: "Yes, God willing." On the first day we moved to Tel Rumeida, we finished moving our things at 10am and then I went to work. After an hour, the soldiers broke into my home and messed it up. I went back home to my wife crying. She said she didn't want to stay one more minute in that home, but I calmed her down.

My wife's family owned the home that I lived in before moving to Tel Rumeida. It has become deserted since we left. Nowadays, we can enter it from Abu Snineh neighborhood, but the road that leads to the home from al-Ibrahimiyyeh school is closed. Eighty percent of the homes in that area were emptied and deserted as well.

The first incident with settlers that occurred after I moved to Tel Rumeida was the burning of my car. I had parked it 50 meters away from my home. The settlers came that day and burned it and the cars of two other Palestinian families. One day, my sons were carrying water from my neighbor's home on a wagon. On their way home, there were four settlers holding gas spray, and they sprayed my eldest son in the face. He fell down and fainted, and my youngest son hit the settlers. Then, the soldiers arrested him and interrogated him. We had to pay 1000 shekels in order to release him. Even after releasing him, they still charged him.

Whenever I invited my sisters to my home, they wouldn't come for the fear that they would be assaulted. They would explain that I needed to change my address if I

wanted to have them in my home. Even the area where I lived before moving to Tel Rumeida was better than Tel Rumeida. I lived in Tel Rumeida for 12 years, but the situation wasn't as bad as it is nowadays. In the past, there were only a few problems, but recently, they have killed many people as they accused them of stabbing or trying to stab soldiers.

Soldiers once came to my home and accused my children of harassing and throwing stones at the settlers' children. My children, at the time, weren't in the house, so I told the soldiers that my children weren't there. They inspected the home and found out that there were no children at the home. Thus, they justified themselves by saying that maybe the neighbor's children were the ones who had harassed the settler's children.

If I wanted to complain about a settler to a soldier, what would he do about it? He would search me instead and arrest me, and later on he would release me or force me to pay bail. I'm not powerful enough to have my rights. When the powerless complain to the powerful, he doesn't get anything or he gets hit. When the Palestinian governor of Hebron visited Tel Rumeida, I asked him to provide us with security. He said he couldn't, as the Old City is not under the Palestinian Authority control.

Before I moved to the new home, my children used to be detained at the checkpoint and they had to call me each time they wanted to enter the neighborhood. The settlers attacked all of the pedestrians whenever they saw one on the road. For instance, the other day, the settlers kept running behind our neighbor as she was walking in the street. My sons are young, and if one of them comes back late at night one day, he could easily be killed. No one is here to secure us. I don't want to lose them for nothing.

[Since October 2015], anyone can be a victim of the soldiers' shooting. The soldiers and the settlers may throw a knife near anyone and accuse him of trying to stab someone. All of my sons and daughters are young and I had to move to Farsh al-Hawa for the fear that I might lose them one day. The home in Farsh al-Hawa was not ready when we moved to it. My sons told me that they wanted to get married and that they couldn't handle life under threat of danger anymore. All of my children's friends are from the Old City. They lost their friends when we moved to this home because it's very far. It's safe here in Farsh al-Hawa and there's no danger in visiting us at all. However, the transportation to Farsh al-Hawa is very expensive.

We moved to Farsh al-Hawa in late 2015. We moved before the closure of Tel Rumeida. If we hadn't moved, we would have been unable to come and go. I have been building this home [in Farsh al-Hawa] for eight or nine years and still I haven't finished building it because I don't have much money. However, I had to move to it when we had no other choice. I decided that living on the floor was better than staying in Tel Rumeida. I can handle being in debt, but I can't handle losing one of my sons.

I used to work in a shoe factory and I had a shop in Haret al-Shaikh [Shaikh

Neighborhood]. I also have a taxi license. A while ago, before I moved to this home, I used to work as a taxi driver. Then, I sold the taxi and bought a private car because Farsh al-Hawa is very far from the city center. Ever since I moved to this home, I have become unemployed and have had health problems. I have had six surgeries so far. Dividing Hebron into H1 and H2 affected all the people here, not only me. For instance, those who had factories and shops in the Old City became broke. If Hebron wasn't divided, I would still have my shop and I would have been more financially stable.

A person can be patient, but at some point when things get really hard, you just can't take it anymore.

Legal Analysis

The forced displacement of protected persons by expulsion or other forms of coercion

41. The selected case studies concern persons that may be considered as 'protected' under international law on account of their status as members of an occupied civilian population.

42. The respective instances of displacement (including two separate instances of displacement highlighted in case study #2) contained therein may be considered as 'forced' in nature. The underpinning factors for the individuals' 'decision' to leave - or to remove family members from - the area were stated as economic and social hardships resulting directly from Israeli-implemented closures and movement restrictions, as well as the threat of violence and/or harassment from Israeli military or police personnel and from Israeli colonizers. Accordingly, there exists a demonstrably coercive environment, born of a number of factors which produces displacement of Palestinian civilians that cannot be said to be consensual in nature.

43. The forced displacement outlined in the above case studies is attributable to Israel on the basis that the acts and practices which underpin the coercive environment within Hebron are undertaken and performed by state actors in accordance with official Israeli policy.

44. Where the actions of colonizers establish or contribute to a coercive environment, such actions may, too, be attributed to the State. Though colonizers are Israeli civilians and do not have formal ties to the Israeli government, the unlawful presence of Israeli colonizers inside the oPt is openly and systematically facilitated and maintained by state bodies, be it through administrative or economic support, provision of physical infrastructure or security. This facilitation and maintenance is undertaken in accordance with official government policy, over which the highest echelons of Israel's political establishment preside.

45. In addition, there exists almost complete impunity for crimes committed by Israeli colonizers towards members of the Palestinian civilian population. According to Yesh Din, between 2005 and 2014, just 7.4 percent of investigations into colonizers attacks on Palestinians and Palestinian property resulted in indictments being issued by Israeli authorities.[76] This systematic failure - as noted in case study #2 - to punish perpetrators of hate crimes offers no deterrent to those planning or carrying out such acts and may also be viewed as, at a minimum, tacit acceptance of these crimes by the Israeli establishment. Indeed, the causal link between policies of the Israeli government and attacks by

[76] Yesh Din. 10.2015. *Data Sheet October 2015: law enforcement on Israeli citizens who harm Palestinians and their property in the West Bank.* Available at: http://www.yesh-din.org/en/data-sheet-october-2015-law-enforcement-on-israeli-citizens-who-harm-palestinians-and-their-property-in-the-west-bank/

colonizers on Palestinian inhabitants of the oPt was identified in the September 2015 report of the UN Special Rapporteur on the human rights situation inside the occupied Palestinian territory.[77] It is on these twin bases that coercion of Palestinian civilians to leave their homes and communities resulting from colonizer violence and/or harassment may be attributable to the State.

From areas in which the affected persons were lawfully present

46. To BADIL's knowledge, that the individuals interviewed for the above case studies were lawfully present in their respective areas is uncontested. However, BADIL notes that although the elements of 'lawful presence' have never been thoroughly examined by international criminal tribunals, in *Popović*, the ICTY Trial Chamber adopted a broad approach to the requirement, opining that:

> Clearly the protection [against forcible transfer] is intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community. In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for "residency" to be demonstrated as a legal standard.[78]

In light of this rationale, the previous presence of the featured individuals in their respective areas may be comfortably regarded as 'lawful'.

The removal taking place without grounds permitted by international law

47. There exists no reasonable basis to suggest that Israel's forced displacement of Palestinian civilians from Hebron's H2 area is conducted under grounds permitted by Article 49(2) of the Fourth Geneva Convention.

48. Such displacement is clearly not undertaken for the 'security of the population', understood as a scenario whereby an area is in danger as a result of military operations or is liable to be subject to intense bombing. No such military operations or risk of bombing are present, thus also precluding any suggestion of the displacement being permitted on the grounds of 'military imperative'.

49. Nor can the displacement in question be said to be required for humanitarian reasons, as those factors from which the displaced persons in question are seeking to escape are created and engineered by the policies and actions of the Israeli occupying forces.

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[77] UN Secretary General. 25.09.15. A/70/392. *Note by the Secretary General on the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*. Para. 47

[78] *Popović et al*. Para. 900; ICTY. Prosecutor v. Đorñević. 23.02.2011. Case No. IT-05-87/1-T. Judgement. Paras. 1616, 1640

50. In addition, 'evacuation' as per Article 49 of the Fourth Geneva Convention refers to a *temporary* period of displacement[79] and, therefore, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption. There is no indication that Israel is looking to facilitate the return of Palestinians displaced from Hebron, while the absence of concerted military hostilities would also appear to render Article 49(2) inapplicable to the case in point. Further, there exists a clear failing on behalf of the Occupying Power to ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced, that the removals are carried out in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated, as is required under Article 49(3) of the Fourth Geneva Convention as part of any lawful evacuation.

Demonstrable plan/purpose

51. That the transfer of Palestinians within and from Hebron - including those persons outlined in the above case studies – is conducted in the context of an Israeli plan or purpose to affect such transfers may be comfortably inferred from both Israel's past and contemporary actions, and the plainly evident results of such actions.

52. For instance, large-scale forced displacement may be considered a natural consequence of the creation of the aforementioned coercive environment. Further, it is inconceivable that the Israeli occupying forces could have remained ignorant of the forced displacement of Palestinians which resulted from earlier implementation of materially identical policies, including access restrictions and colonizer-related violence, harassment and dispossession. In fact despite its awareness, Israel has maintained and reinforced such policies, as well as introducing other measures, including relaxed 'open fire' regulations[80] and directives, which can objectively be said to have contributed to this coercive environment.

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[79] *Blagojević*. Para. 600

[80] On 29 June 2016 the Israeli police updated its open-fire regulations. It permits officers to open fire with live ammunition on those throwing stones or firebombs, and on those shooting fireworks.

Chapter Four

Forcible Transfer of Palestinian Herder Communities in Area C

Chapter 4

Forcible Transfer of Palestinian Herder Communities in Area C

53. This chapter focuses upon Israel's forcible transfer of Palestinian herder communities - including Palestinian Bedouin populations - from and within Area C. These communities are particularly vulnerable to forcible transfer on account of their presence and reliance upon access to relatively large, unpopulated areas for the purpose of raising livestock. The majority of such areas – and, indeed, the majority of West Bank lands - falls into what was designated in the Oslo Accords as 'Area C', over which Israel exercises full administrative control following the signing of the Oslo Accords. As this chapter will outline, this administrative control, combined with the strategic importance to Israel of Area C, has produced an environment in which it is increasingly difficult, if not impossible, for Palestinians to remain.

54. A primary vehicle used by Israel to pursue such displacement and dispossession is its zoning and planning policy;[81] this system is one of the most influential mechanisms affecting the map of the West Bank. To this end, the UN Secretary-General has previously noted the Israeli zoning and planning policy in the West Bank, which regulates the construction of housing and structures in Area C, is restrictive, discriminatory and incompatible with requirements under international law.[82] As observed in a January 2016 report from the Secretary

[81] For more details, see: BADIL. 12.2014. *Forced Population Transfer: The Case of Palestine, Discriminatory Zoning and Planning*. Working Paper No. 17. Available at: http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf

[82] UN Secretary General. 12.02.14. A/HRC/25/38. *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*. Para. 11-20

General, "[t]he planning system favours Israeli settlement interests over the needs of the protected population and makes it practically impossible for Palestinians living in Area C (approximately 300,000, according to the Office for the Coordination of Humanitarian Affairs) to obtain building permits. Severe restrictions on Palestinian planning in Area C further prevent the development of communities, which are effectively denied basic services and infrastructure under the current policy."[83]

55. Specifically, within Area C Israel has implemented a legal framework which - through designations of 'state' lands; closed military zones; areas under the jurisdiction of Israeli colonies; areas of existing and planned road networks and land reserved for the route of the annexation and separation Wall – prohibits Palestinian construction on 70 percent of the land. For the remaining 30 percent of Area C land where Palestinian construction is theoretically permitted, the applicable planning law is established by the Jordanian *Towns, Villages, and Building Planning Law No. 79* of 1966, which requires the existence of a detailed and dedicated planning scheme before construction can take place. Shortly after Israel's occupation of the West Bank in 1967, the Israeli *Military Order Concerning Towns, Villages and Buildings Planning Law (Judea & Samaria) No. 418 of 1971* was introduced, removing all Palestinian representation from the planning process by way of annulment of Local Planning Committees. Instead, this responsibility was transferred to the Israeli Civil Administration's Local Planning and Licensing Sub-Committee.[84]

56. Similarly, the responsibility for the issuing of building permits lies with the Secondary Planning Committee, which is also part of the Civil Administration. Through a broad interpretation of Jordanian law, the types of structures for which a building permit is required is extensive, including both permanent and non-permanent structures, as well as being applicable to any repairs of structures already in place. Furthermore, the application process for a permit is both cost-prohibitive and has an extremely low success rate. For instance, between 2008 and 2012, 97.7 percent of Palestinian-submitted building permit applications in Area C were rejected by Israeli authorities.[85] Palestinians therefore have little option but to build 'illegally' under Israeli law, and thus face the risk of demolitions.

57. Focusing upon this trigger of displacement - demolitions and the demolition orders which precede them – is particularly instructive. According to the United Nations, between 1988 and 2014, Israeli authorities issued more than 14,000

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[83] UN Secretary General. 20.01.16. A/HRC/31/43. *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*. Para. 45

[84] For more details, see: BADIL. 12.2014. *Forced Population Transfer: The Case of Palestine, Discriminatory Zoning and Planning. op.cit.*

[85] Civil Administration's response to B'Tselem. Quoted in: B'Tselem. 2013. *Acting the Land Lord: Israel's Policy in Area C, the West Bank*. Available at http://www.btselem.org/download/201306_area_c_report_eng.pdf

demolition orders against Palestinian-owned structures, including homes, in Area C of the occupied West Bank.[86] Presently, the vast majority of Palestinian herder structures inside Area C have demolition orders pending against them, and large numbers of demolitions have already occurred.

58. According to OCHA, in 2013, Israel demolished 565 Palestinian structures in Area C.[87] In 2014, this number decreased to 493 Palestinians structures; however, the total number of displaced persons resulting from such demolitions was almost 10 percent higher than the previous year.[88] Such demolitions continued in 2015, spiking in August with Israel's unlawful razing of at least 39 structures in Palestinian Bedouin communities in the West Bank on 17 and 18 August, leaving 126 people homeless, including 80 children.[89]

59. As has been noted, Israeli demolitions of Palestinian homes and other structures located in Area C accelerated in 2016, resulting in significant forced displacement of civilians. According to OCHA, as of the end of December- 2016, Israel had demolished or confiscated 1,089 Palestinian structures and displaced over 1,593 people.[90] These figures include the demolition and removal of donor-funded structures, with such acts also increasing in frequency.

60. As of March 2016, Israel had destroyed almost as many European-funded structures in 2016 as in the whole of 2015,[91] primarily targeting those essential to the maintenance of a civilian population, such as structures concerned with accommodation, hygiene, agriculture and solar power. It has been calculated that the demolition rate increased 230 percent between early 2015 and early 2016, and 689 percent for donor-funded structures.[92] Large numbers of personnel from the Israeli military and/or border police use heavy machinery to execute demolitions which often occur in the early morning with no specific prior notice. Such demolitions - whether enforced against donor-funded or non-donor-funded structures - are clearly performed on a systematic basis, at

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[86] OCHA oPt. 09.2015. *Under Threat: Demolition orders in Area C of the West Bank.* Available at: http://www.ochaopt.org/documents/demolition_area_c_3-9-2015.pdf

[87] OCHA oPt. Update 08.2014. *Area C of the West Bank: key humanitarian concerns.* Available at: https://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_august_2014_english.pdf

[88] OCHA oPt. *Forced Displacement*. Available at: http://data.ochaopt.org/content.aspx?id=1010137

[89] Human Rights Watch. 22.08.2015. *Israel: Surge in Unlawful Palestinian Home Demolitions*. Available at: https://www.hrw.org/news/2015/08/22/israel-surge-unlawful-palestinian-home-demolitions

[90] OCHA oPt. 20.12.2016. *Record number of demolitions in 2016; casualty toll declines.* Available at: http://www.ochaopt.org/content/record-number-demolitions-2016-casualty-toll-declines

[91] Written question E-002290-16, presented to the European Parliament 17.03.2016 by Julie Ward, Ana Gomes, Pascal Durand and Enrique Guerrero Salom. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2016-002290+0+DOC+XML+V0//EN

[92] Amira Hass. Haaretz. 21.02.16. *Israel Dramatically Ramping Up Demolitions of Palestinian Homes in West Bank*. Available at: http://www.haaretz.com/israel-news/.premium-1.704391

the behest of high-level Israeli officials, and have a devastating impact upon those affected.

61. For instance, a study commissioned by the Norwegian Refugee Council[93] concluded that the average adjusted damage (factoring in – *inter alia* - physical damage to property, psychosocial and legal costs) inflicted upon each Palestinian household impacted by displacement was NIS 680,648 (USD 179,777[94]). Reports of physical assaults of residents and observers by Israeli personnel during demolitions are common, while a 2009 report from Save the Children found that children whose homes had been demolished were more withdrawn than other children; complained more of somatic ailments such as dizziness, phantom pain and breathing issues without any known cause; suffered greater rates of anxiety and depression; exhibited greater rates of delusional, obsessive and psychotic thoughts, and were more prone to delinquency, violence and inappropriate sexual behaviors.[95]

62. Such effects are compounded not only by Israel's refusal to provide subsequent humanitarian assistance to those affected, but also by its prohibition of provision of such assistance by third parties. This prohibition is in direct contravention of International Humanitarian Law which demands that, in circumstances where a primary duty bearer is unable or unwilling to abide by its obligations towards a protected population, full access by humanitarian organizations must be permitted. Such access cannot be refused on arbitrary or unlawful grounds.[96]

63. As well as the prevalence of demolition orders, few Palestinian herder communities in Area C have been connected to the public water network, whilst none have been connected to the public electricity network. Access to crucial grazing land is made increasingly difficult due to the route of the Wall and the expanding boundaries of colonies,[97] and this expansion also brings with it harassment and threats of violence from colonizers. The cumulative result is an often desperate living environment, and a clear breach of the right to adequate housing, enshrined within the International Covenant on Economic, Social and Cultural Rights (to which Israel is a signatory).

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[93] Shir Hever. Norwegian Refugee Council. 05.2015. *The Economic Impact of Displacement: Analysis of the Economic Damage caused to Palestinian households as a Result of Displacement by Israeli Authorities*. Available at: https://www.nrc.no/globalassets/pdf/reports/the-economic-impact-of-displacement.pdf

[94] Conversion accurate as of 27.01.2017

[95] Save the Children. 2009. *Broken Homes*. 27-28. Available at: https://www.savethechildren.org.uk/sites/default/files/docs/Broken_Homes_English_low_res.pdf

[96] For a detailed consideration of the obligation of an occupying power to provide and facilitate humanitarian assistance, see Felix Schwendimann. 12.2011. *The legal framework of humanitarian access in armed conflict*. Available at: https://www.icrc.org/eng/assets/files/review/2011/irrc-884-schwendimann.pdf

[97] OCHA oPt. 2014. *Area C Vulnerability Profile*. Available at: http://www.ochaopt.org/documents/ocha_opt_fact_sheet_5_3_2014_en_.pdf

64. As such, Palestinian herder communities in the central West Bank are confronted with an impossible decision: a choice between succumbing to transfer, or awaiting forced eviction from their homes in what has become an unlivable environment of Israel's making.

65. In direct reference to the situation faced by Palestinian herder communities in Area C, the UN Secretary General has noted that "[d]isplacement and relocation to alternative residential areas, as a result of demolition orders, and a coercive environment could amount to individual and mass forcible transfer and forced evictions, contrary to the obligations of Israel under international humanitarian and human rights law."[98]

[98] UN Secretary General. 20.01.2016. A/HRC/31/43. *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan*. Para. 68

Case Study #3: Ali Suleiman Mleihat | Dair Dibwan/Mikhmas | transferred in 2014

Coercive environment created by:

Administrative home demolitions; harassment/violence from Israeli forces and colonizers; lack of access to services and grazing lands

I am from the Arab al-Ka'abna community [Arab al Ka'abna are originally from the al Jahalin tribe, now located in areas between Jericho and Jerusalem]. I have 10 children; 5 boys and 5 girls - one of whom is under the age of 18 - And I have two wives. We are refugees without the refugee card [not registered with UNRWA]. I have a Palestinian ID (West Bank). My family is originally from Southeast of Hebron, but moved from that area in 1948 to a place known as Dair Dibwan, but they now call it Ma'ale Mikhmas (after the settlement was built there in 1981). We are refugees since the year 1948. We never got the chance to be registered refugees, though the rest of my family - cousins, uncles and so on - are registered. I am a farmer, and I work with sheep. There is no other alternative for me.

I was living in Mikhmas for a very long time. I was born there. We didn't rent our property or anything like that. We are Bedouins; we just wander in these government-owned lands to live and to work. But when Israel started harassing us, we were forced to stay in one area and not move around freely. It was, of course, more comfortable living there before all the harassments. When you have no one harassing you, you live comfortably and you feel safe. And when you are being harassed constantly, you feel unstable.

From 1984 onwards, we started experiencing harassments from Israelis whenever we were wandering with our sheep and trying to work. That's why we have had to move a lot. I also experienced demolitions multiple times. In Mikhmas, they demolished my house five times. There were a lot of people living in Mikhmas, almost 60 or 70 families (more than 600 people), but they were dispersed and have gone to many places now.

Before the demolitions, we lived out in the nature. We had tents and then we built housing units (barracks) but then Israelis came and told us we are not allowed to build or live there, because it was a military training zone. They started demolishing our houses over and over again, in addition to harassing us in different ways. We are modest people, and can barely manage to live. When they demolish our houses, we need to think a thousand times about how to rebuild them. For example, when they demolished my house, I received no help. I had to pay from my own expense to rebuild it. We left Mikhmas and came to this area (al-Mo'arajat, roughly 10km from Mikhmas) in 2014. We came here because

they demolished my house in Mikhmas five times, but they still demolish my house here as well.

The Israeli soldiers were also harassing us whenever we used to wander with our sheep. They used to come and tell us not to go in specific directions, or to certain places. And when you work with sheep, you need space, and you need nature. In Mikhmas we had been able to move freely with our sheep until they came and announced some parts of that area as a military training zone. Not only that, but we were also harassed because of our barracks. They would come a lot and tell us to remove certain barracks that we lived in, or to remove the ones that were used by the sheep. Also, in Mikhmas, we had to go through checkpoints on the way in and out. Of course, later on settlers came into the picture. We have been experiencing settlers' harassment in both places: Mikhmas and here. When we moved out of Mikhmas, we were separated, of course. Some of my brothers stayed there, and some had to leave further away, and I came here. We do meet up sometimes, and visit each other on special occasions.

We have received many warnings from the Israeli Civil Administration, both to evacuate and telling us of coming demolitions. Both warnings are the same. When they ask us to evacuate, that means they are coming to demolish, and when they warn us that they are coming to demolish, it means we need to evacuate so when they come, they don't find us there. You would never be sure of the time between giving you the warning, and the actual demolitions. Sometimes they take two months, 6 months, or even a year. And sometimes they come suddenly and demolish many barracks in the area, and when you see them, you would know that your turn is coming up next. They don't give any explanation. They come and deliver these warning letters, and when we are not here to receive the letter by hand, they leave it on the ground and put two rocks on top of the letter so it won't fly away. I tried more than once to get an explanation, but they never spoke a word.

I have a lawyer, but even with the lawyer it is useless. I have had many lawyers; one in Mikhmas, because that belongs to the Jerusalem area, and another lawyer that belongs to Jericho/the West Bank. And yet, nothing worked out. The court doesn't even look at the case because they say I don't even have documents of the land. Documents that prove I own or I am renting it. But when a Jewish settler comes out of nowhere, the court would rule for his side, and give him permission to own and stay on any land here.

More than once the Israelis have asked me to sign a consent form to demolish or evacuate my home, but I never signed any of them. They never forced me, but they definitely tried. No other families have signed, either. We have lost a lot financially and materially. They demolished each time the same amount of barracks I have now, and I have always rebuilt on my own expenses. The last warnings were received on 18 November 2015, and they haven't carried out any more demolitions since then. We hired a lawyer, and we are waiting for the response. We still don't know what is going to happen. Either we leave or stay longer.

After the demolitions, we had to gather everything we had and start moving. We used our cars, tractors, and managed to get here after a while. It wasn't easy at all. You can see on the road, all these families you see on the road have gone through similar situations and had to move.

I used to come here occasionally. When I was in Mikhmas, I used to live there in the summer, and come to this area in the winter. But in 2014, I had to settle here. I don't own this land, nor am renting it. This is governmental land, and we just live on it. Now it belongs to Israel under Area C. I have no documents for it. Life is never easy here, especially during the summer. It is hot and unbearable. But what can we do? There's no alternative. We find it hard in terms of electricity, as we have only a solar power system. We found out about the solar power system through an organization that provided us with one battery. But then we had to buy an extra one to be able to cover the entire place we have. For water, we fill tanks and bring them to this place.

We are under occupation; it will always be difficult for us. People who live far away from the occupation and the settlements, they don't feel or sense the struggle. But because we are very near to them, we struggle to live.

I really love this place. If only I got a chance to extend my house and build a proper house here I would be very pleased with it. Without the harassments of Israelis, we would be the happiest people on this land. I had built a small room here, which they demolished. And I also had barracks for my guests, one for my son and another for the sheep, but they were all demolished. They didn't leave anything. You could only see trees standing. When I saw this place after demolitions, I only saw the trees, which brought my life back. I was very happy to see the trees not damaged. That was three years ago.

Even working with the sheep there are many restrictions. We cannot wander freely as long as Israelis are there. I go to wander with my sheep 200 meters from my house, and I always see settlers trying to come after me, especially in the settlement next to where we are now. Sometimes, the settlement guard is standing there to prevent us from going places. I have not been arrested, but my children have, because they were wandering with the sheep and they were caught by the settlers. Then the police arrived and settlers were telling the police that my children had stolen the sheep from them, which obviously is not true at all. I took this case to the Israeli court and the court ruled for my side. But until today, they have not returned the sheep. I recently asked and they said that the sheep were dead.

The settlers come often towards our side. They once came at night and started throwing rocks at my children's barracks. There was also another incident when they came at night and hit one of my children. It is never ending. We told the police many times. For instance, a settler attacked our neighbor, and the latter came running towards us. He was asking us to keep him safe from the settlers. We had to protect him, so my brother and I got involved in a fight with the settlers. At the end, a soldier came and beat me up and pointed his gun right in my back. It was painful. But there's nothing else we can do. We have made reports to the police many times, but no one

was helpful. Soldiers would see how settlers are violent but they would do nothing. Instead of preventing them from getting close to us, soldiers would encourage them to attack.

If I had the chance, I would go back to Mikhmas, but I cannot go back because I have no place to live. If I build in that area, they would demolish it. The last demolition was very horrible for us. We had no roof over our heads to keep us safe and away from the rain when it was raining. And it was not easy to rebuild this place. They could come and demolish our house again. You never know. We all feel unsafe and worried, but I will stay here. Even if I had to rebuild this entire place over again, I will never leave. I have no other option.

Case Study #4:
Na'im Shalalda | Sa'ir |
transferred in November 2015

Coercive environment created by:

Administrative home demolitions; harassment/violence from Israeli forces and colonizers; lack of access to services and grazing lands

Before the Israelis demolished our houses, we used to live in another area, near Sa'ir (roughly 6km north east of Hebron), next to an Israeli settlement and to the west of where we are now living. The land we lived on was owned by our relatives.

On 16 November 2015, the Israelis came and demolished our homes. One day before, on a Sunday or a Monday, the Israeli army and the Israeli civil administration officers came to us, and said we had four days to leave before they would demolish the homes. They didn't give us an official paper asking us to leave; they just said it's Area C, that it is an Israeli area and that it is not allowed for us to live there. That day I was not home; the children told me what happened. We said that there is no choice but to leave, let's move away to a different place to get away from them. We know how the Israelis deal with things - there was no other way.

By that time, we were thinking that we had four days until the demolitions. The next day, at 6:00 am they came to our home - before students even go to school - with two bulldozers, 20 to 30 soldiers and 18 to 20 officers from the Israeli Civil Administration. You would think that you are in a war! We were only a few people, with nobody to help us. They didn't even allow our only neighbor, Ibrahim, to come to us.

They started destroying the homes. We had four barracks there: three for us to live in, and another for the sheep. They started destroying all of them with the bulldozers. We tried to take out some of our furniture - can you imagine they only gave us five minutes? We had enough furniture to fill a big building; everything any house needs was inside, from kitchen tools, clothes, accessories and mattresses - could you really take all of that out in five minutes?

The physical damage caused was around 30,000 Shekel (7,700 USD) in value. Afterwards, a religious Israeli (Sephardic Haredim) went to the person working the bulldozer and asked him to fill the shovel of the bulldozer with stones, which they then emptied on our things that we had removed from the barracks. When the soldiers had demolished the houses, they asked me to sign a paper. I said 'no'.

We left on the same day. We had been living in that area for four years.

In total there are four families living here, at our new location, with a total of roughly 25 persons, with perhaps 13 children. The land is ours, most of this area is owned by the al-Shalalda family, and another part of it is also owned by the al-Shyokh family. In my family, in addition to my wife and I, I have three sons who all used to live in their own house. We don't really have property [a house] here. We only have one store, which is why we are living here. For work, we have sheep, I take care of them. We also have some olive trees on our land here, and we take care of them, too. My sons work in the stone industry.

We wanted to rebuild at our previous location but people told us not to because the Israelis will re-demolish the houses. The Israeli authorities would think that we are challenging them. Now we have moved here. These roofs are from our neighbor and our cousins; we took something from everyone to build this. The previous barracks were completely ruined. With these kinds of barracks, if you break the steel rod in them, they are completely ruined. This type of roof, if it has a small hole, water starts to come in and you would not be able to live in the barracks anymore, just like any house.

This land that we are now on is ours, we have official papers. But still, they came and demolished two barracks owned by my cousin. We are suffering. They made us experience the Nakba again.

Also, the harassment from settlers never ends. Every day, if not when you are in your home, then when you are walking on the roads. If not, then when you are with the sheep. You can't live as their neighbor. One year ago, my son was walking with the sheep, the settlers came down from the settlement and beat him up. He ran away and they ran after him. The Israeli army then came and caught my son, and they took one sheep. My son was held in Ofer prison for six months because he came close to the settlement with the sheep. Even in our new location we do not feel at all safe, as soldiers and settlers are still very close. As for services, for water we buy water tanks and we have some wells, but in summer the wells are empty. As for electricity, we do not have any.

This situation has psychological and financial impacts. When they demolish somebody's home, our houses are just the same as those in [a town]: when demolishing one, the effect is the same. We live in them, our kids live there in summer and winter, and our furniture is in them. It is the same as demolishing the houses of martyrs - what happened to their families? They disperse. We are the same.

If we had the chance we would go back to our previous location [where the demolitions took place], but we cannot as they would re-demolish our houses. I don't know if even here we are safe. Ten days ago, the Israeli Civil Administration officers came and took pictures of our house and my uncle's house, but they did not say anything. We asked what they were doing but they did not answer.

We might be displaced again. It is possible, but where would we go? There is no other choice.

Legal Analysis

The forced displacement of protected persons by expulsion or other forms of coercion

66. The selected case studies concern persons that may be considered as 'protected' under international law on account of their status as members of an occupied civilian population.

67. The selected case studies suggest that the respective instances of displacement contained therein may be considered as 'forced' in nature. The underpinning factors for the individuals' 'decision' to leave the area were stated as home demolitions and the resulting economic and social hardships which directly resulted from such demolitions, as well as hardships relating to Israeli-implemented movement restrictions. In addition, acts and/or threats of violence and/or harassment from Israeli colonizers – often conducted in the presence of Israeli military or police personnel – further contribute to a demonstrably coercive environment for Palestinian herder communities inside Area C of the West Bank.

68. This assessment is reinforced by the findings of a January 2016 report from the United Nations Secretary General, which concluded "[t]his impossibility [for Palestinian herder communities inside Area C] of building safely creates enormous pressure on communities, particularly those targeted for relocation, as they know that within the current system there is no long-term protection from demolition and destruction of their property, creating a coercive environment that effectively drives communities off the land they have inhabited for decades."[99] Moreover, this same report explicitly highlights the following factors as contributing to the creation of a coercive environment for Palestinian residents of Area C: Israeli zoning and planning policy (including demolitions),[100] long-standing access restrictions to basic services and grazing land; and systematic intimidation by Israeli colonizers.[101]

69. Human Rights Watch has documented "how the cumulative impact of Israeli restrictions on Palestinian construction and related demolitions,

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[99] UN Secretary-General. 20.01.2016. A/HRC/31/43 *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan*. Report of the Secretary General. Para. 46; Similar observations have been made by third party states. See Peter Beaumont. The Guardian. 18.07.2016. *Ambassadors protest at Israel's confiscation of West Bank shelters*. Available at: https://www.theguardian.com/world/2016/jul/18/ambassadors-protest-israel-confiscation-west-bank-bedouin-shelters

[100] UN Secretary-General. 20.01.2016. A/HRC/31/43 *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan.* Report of the Secretary General. Para. 60

[101] Ibid. Para. 54

along with other restrictive policies, have resulted in the forcible transfer of Palestinians. Palestinians who are unable to build homes are compelled to move to areas of the West Bank under Palestinian Authority control or to emigrate from Palestine altogether."[102] Similarly, in a 2012 expert opinion on the prohibition of forcible transfer in Susya Village, located in Area C, Benvenisti concluded:

> Indirect transfer or deportations are performed in this case by creating the physical conditions that oblige the protected persons to leave the location where they are against their will. This will be the actual situation following the execution of the demolition orders: pursuant the planned demolition of structures, there will be no way to survive in the area of the village without shelter and other facilities that ensure the sustenance and livelihood of the residents. The destruction of all the structures in the village is the de-facto forcible transfer of more than 200 men, women and children.[103]

70. Such assessments leave little doubt that the range of factors identified in the provided case studies may be considered as having produced a coercive environment, an environment characterized by such hardships that an irresistible pressure was exerted on residents to leave their homes and communities. The participants from both case studies indicated that they would not have moved if the option to stay had been available to them, and their displacement is, therefore, forced in nature.

71. The forced displacement outlined in the above case studies is attributable to Israel on the basis that the acts and practices which underpin the coercive environment within Area C are undertaken and performed by state actors in accordance with official Israeli policy and legislation. The issuing of demolition orders and the subsequent execution of demolitions are undertaken by members of the Israeli military and/or police at the behest of the Israeli Civil Administration (ICA) - the government body responsible for administering Israel's occupation of Palestinian territory – in accordance with official government policy, over which the highest echelons of Israel's political establishment preside. Similarly, the ICA is also responsible for the imposition of restrictions on both the movement of Palestinians inside Area C as well as Palestinian access to services; restrictions which are then enforced by military or police personnel. Further, as addressed in the previous

[102] For the full report, see: Human Rights Watch. 19.12.2010. *Separate and Unequal: Israel's discriminatory treatment of Palestinians in the Occupied Palestinian Territories*. Available at: https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied

[103] Eyal Benvenisti. 30.06.2012. *Expert Opinion on the Prohibition of Forcible Transfer in Susya Village*. Para. B.1. Available at: https://www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/expert-opinions/the_prohibition_of_forcible_transfer_in_susya_village.pdf

chapter, acts by Israeli colonizers may be attributed to the Israeli government for the purpose of invoking state responsibility, and this is reinforced by the above testimony which suggests soldiers are not only present during colonizer attacks, but are at times positively encouraging such attacks.

From areas in which they were lawfully present

72. Though Israel deems the presence of Palestinian herder communities in Area C as unlawful, such an assessment is based upon a demonstrably discriminatory planning and zoning system which is incompatible with international law.[104] Specifically, Israel's total control of the planning, zoning and construction process inside Area C operates in direct contravention of Article 43 of The Hague Regulations[105] - considered as customary IHL and thus binding upon Israel despite it not being a state signatory - and Article 64[106] of the Fourth Geneva Convention.[107] These provisions prohibit an occupying power from introducing new legislation or amending existing legislation, including the existing administration of justice, inside the occupied territory unless such measures serve to restore/maintain public order; contribute to the genuine security of the occupation forces; assist the Occupying Power in fulfilling obligations under IHL and/or IHRL; or if such actions enhance the civil life and wellbeing of the protected population during prolonged occupation. The criminalization of Palestinian construction inside Area C - often a precursor for colony construction/expansion in the affected location(s) - cannot objectively be said to satisfy such requirements.

73. Further, the fact that, in many cases, the affected herder communities are not the legally-registered owners of the land from which they were displaced - with some 80 percent of Palestinian Bedouin communities currently residing within the central West Bank being registered refugees - does not, *per se*, affect their lawful presence for the purpose of establishing forcible transfer. Recalling the aforementioned *Popović et al* ruling, the Trial Chamber stated that "[c]learly the protection [against forcible transfer] is intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community".[108]

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[104] Ibid. Para. B.4

[105] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague. 18.10.1907

[106] Though some scholars consider the application of Art.64 limited to penal legislation only, this is an argument compellingly refuted by Sassòli (see Marco Sassòli. 2005. *Legislation and maintenance of public order and civil life by occupying forcess*. European Journal of International Law. Vol. 16 (4). 669-671) and does not represent the view of the ICRC under the ICRC Commentary (Jean S. Pictet, IV Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary. ICRC. Geneva. 1958. 335–337)

[107] Art. 64, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva. 12.08.1949

[108] *Popović et al*. Para. 900

The removal taking place without grounds permitted by international law

74. There exists no reasonable basis to suggest that Israel's forced displacement of Palestinian herder communities from or within Area C of the West Bank is conducted under grounds permitted by Article 49(2) of the Fourth Geneva Convention.

75. Such displacement is clearly not undertaken for the 'security of the population', understood as a scenario whereby an area is in danger as a result of military operations or is liable to be subject to intense bombing. No such military operations or risk of bombing are present in the areas in question.

76. Concerning the question of military imperative, in a number of cases Israel has sought to forcibly remove Palestinian communities from areas which it has designated as military training areas of firing zones, including through the use of home demolitions. For instance, on 2 February 2016, Israeli forces demolished a total of 22 homes in the Palestinian communities of Khirbet Jenbah and Khirbet al-Halawah in the South Hebron Hills, which lie in an area declared by the Israeli military as Firing Zone 918. In total, 110 Palestinians were displaced, including 64 children.[109] Such actions, however, cannot be considered as falling within the exemption of military imperative.

77. As a starting point, when seeking to invoke the exception of military imperative or necessity, there must first be a clear, stated military purpose for the otherwise unlawful measure. In relation to 'Firing Zone 918', for instance, Israel's stated military purpose for the removal of Palestinians from the area is to allow for the conducting of live-fire training, for which Israel claims that the ground in question is particularly suitable.[110] In assessing the relationship between the measure taken and the purpose that it was intended to attain, legal scholars have suggested the following criteria:[111]

    (i) That the measure was materially relevant to the attainment of the stated military purpose;

    (ii) That, of those materially relevant measures that were reasonably available, the one taken was the least injurious; and

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[109] B'Tselem. 02.02.2016. *Israeli authorities demolished 22 homes in Firing Zone 918 in the South Hebron Hills*. Available at: http://www.btselem.org/south_hebron_hills/20160202_demolitions_in_firing_zone_918

[110] Amnesty International. 03.07.2013. *Urgent Action: Army Plans Forced Evictions of Palestinians*. Available at: http://www.amnestyusa.org/sites/default/files/uaa17013.pdf

[111] Hayashi. 03.2010. *Requirements Of Military Necessity In International Humanitarian Law And International Criminal Law*. Boston University International Law Journal. Vol. 28. No. 1. 69

(iii) That the injury that the measure would cause was not disproportionate to the gain that it would achieve.

78. Weighed against these criteria, and even if assuming that the forced removal of Palestinians from land associated with the firing zone was materially relevant to Israel's stated purpose, given the grave implications of such measures for the displaced, this stated purpose would still likely fall far short in satisfying the second and third criteria. According to a 2013 report from Amnesty International, "[t]he description of Firing Zone 918 provided by the Israeli state […] where it claims that the terrain is particularly suitable for specific live-fire training, does not meet the threshold of such an imperative necessity, and therefore, if implemented, the eviction of the residents of this area would constitute forced transfer in violation of IHL."[112] Such evictions have now taken place.

79. Referring to a December 2013 ruling by Israel's High Court of Justice, in which it was held that Israel could remove Palestinian families from a military training area in the Jordan Valley, Human Rights Watch noted that the judgment "did not refer to any of Israel's duties under international human rights law or the law of occupation. The judgment did not consider whether or not the military could have used other, unpopulated, areas for training purposes that would not require the permanent forcible transfer of the Palestinian residents, or whether military training qualifies as an imperative military reason justifying the forcible and permanent eviction of the residents."[113] Accordingly, "[d]eclaring Palestinian land a 'military zone' and then using this as a pretext for forcibly displacing the people who live there is just one of the unlawful [Israeli] policies that made 1,100 people homeless [in 2013] alone".[114] In *Popović et al*, it was concluded that "it is unlawful to use evacuation measures based on imperative military reasons as a pretext to remove the population and effectuate control over a desired territory."[115]

80. Nor can the displacement in question be said to be required for humanitarian reasons, as those factors from which the Palestinian displaced persons in question are seeking to escape are created and engineered by the policies and actions of the Israeli occupying forces.

81. In addition, 'evacuation' as per Article 49 of the Fourth Geneva

[112] Amnesty International. 03.07.2013. *Urgent Action: Army Plans Forced Evictions of Palestinians*. Available at: http://www.amnestyusa.org/sites/default/files/uaa17013.pdf

[113] Human Rights Watch. 02.01.2014. *Israel: Stop Threatened Eviction of Palestinians*. Available at: https://www.hrw.org/news/2014/01/02/israel-stop-threatened-eviction-palestinians

[114] Ibid.

[115] *Popović et al*. Para. 901

Convention refers to a *temporary* period of displacement[116] and, therefore, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption. There is no indication that Israel is looking to facilitate the return of Palestinians displaced from or within Area C, while the absence of concerted military hostilities would also appear to render Article 49(2) inapplicable to the case in point. Further, there exists a clear failing on behalf of the Israeli occupying forces to ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated, as is required under Article 49(3) of the Fourth Geneva Convention as part of any lawful evacuation. To the contrary, Israel regularly restricts the delivery of humanitarian aid to affected Palestinians inside Area C, as well as confiscating or destroying humanitarian equipment and materials which have been delivered to such persons by third parties.[117]

Demonstrable plan/purpose

82. Israel's intention to remove Palestinian herder communities from the lands upon which they presently reside is unequivocally presented in the form of Israel's 'Nuweima Plan', whereby all such persons and communities remaining in the central West Bank are being evicted and transferred to three urban townships: the first at an existing site near al-Eizariya, and the two largest - Nuweima North and Armonot Hashmonaim, intended to allow for a future combined capacity of 12,500 individuals - to be built near Jericho in the Jordan Valley. However, it should be noted that there exists no requirement under international law for the existence of formalized relocation plans in assessing whether a given case may constitute forcible transfer. Rather, it is sufficient that the Occupying Power accepted the transfer as at least one of the possible consequences of the act(s) in question.

83. In the present cases, the individuals' forced displacement may be reasonably considered as a natural consequence of, *inter alia*, the unlawful issuing of demolition orders and their subsequent execution, along with their associated hardships, as well as widespread violence and harassment from Israeli colonizers, who are supported, or at least protected and not prevented from taking violent acts against Palestinians be Israeli occupying forces. Such an assessment would be compatible with the expert opinion issued by Boutruche and Sassòli, which held that "even if the intent was to be required

[116] *Blagojević & Jokić*. Para. 600

[117] OCHA oPt. 18.05.2016. *Humanitarian Coordinator calls on Israeli authorities to stop destruction of humanitarian aid and respect international law*. Available at: https://www.ochaopt.org/content/humanitarian-coordinator-calls-israeli-authorities-stop-destruction-humanitarian-aid-and

[in arriving at a finding of forcible transfer], it could also be constituted given the modalities and associated practices related to the displacement of Bedouin communities whereby their transfer cannot be seen as an incidental indirect consequence, but was the primary purpose of the evictions and demolitions."[118]

[118] Théo Boutruche and Marco Sassòli. 22.09.2014. *Expert Opinion on the Displacements of Bedouin Communities from the Central West Bank under International Humanitarian Law.* 39. Available at: http://www.jlac.ps/data_site_files/file/studies/Legal_Opinion_on_Forcible_Transfer_of_Bedouin.pdf

Chapter Five

Forcible Transfer by Way of Punitive Home Demolitions

Chapter 5

Forcible Transfer by Way of Punitive Home Demolitions

84. Israeli authorities have demolished an estimated 29,000 Palestinian structures since the start of the 1967 Occupation.[119] The Israeli government classifies these demolitions under three stated policies: administrative demolitions (when the property owner has built without obtaining a permit), military/land clearing demolitions (on the basis of "security"), and punitive demolitions (punishment for the actions of people associated with the accused assailant).[120] Punitive demolitions account for at least 6 percent of home demolitions.[121]

85. These punitive demolitions target homes of suspected or convicted Palestinian assailants and their families. They typically occur at night or during a curfew, and the military authorities usually give residents only 30 minutes to two hours to remove their furniture and belongings.[122] The Israeli military uses bulldozers or explosives to partially or completely demolish the homes. When it is logistically

[119] Israeli Committee Against House Demolitions (ICAHD). 04.2012. *Demolishing Homes, Demolishing Peace; Political and Normative Analysis of Israel's Displacement Policy in the OPT* (hereafter '*ICAHD. Demolishing Homes'). Available at: https://www.scribd.com/document/86911029/Demolishing-Homes-Demolishing-Peace-Political-and-Normative-Analysis-of-Israel-s-Displacement-Policy-in-the-OPT. OCHA oPt. *West Bank – Online Demolitions Database* (hereafter '*OCHA oPt. Demolition Database*'). Available at: http://data.ochaopt.org/dbs/demolition/demolitions.aspx

[120] *ICAHD. Demolishing Homes*

[121] Ibid.

[122] Brian Farrell. 2003. *Israeli Demolition of Palestinian Houses as a Punitive Measure: Application of International Law to Regulation 119* (hereafter '*Farrell. Israeli Demolition*'). 28 Brooklyn J. Int'l L. 888

impossible to demolish a home, the army will fill the home with rubble and concrete, thereby 'sealing' it.[123] In addition to demolishing or sealing the residence, the authorities forbid residents from rebuilding on it in future which amounts to de-facto confiscation of the land.[124]

86. Israel claims to derive authority for these demolitions from the Defence (Emergency) Regulations (DERs), enacted in 1945 by British officials who sought to suppress paramilitary activity in Mandatory Palestine.[125] DER 119 grants military commanders broad powers and stipulates that:

> A Military Commander may by order direct the forfeiture to the Government of Palestine of any house, structure, or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations involving violence or intimidation or any Military Court offence; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything growing on the land.[126]

87. Prior to the British Mandate's expiration, the British repealed the Defence (Emergency) Regulations, however the Israeli government claims that the repeal was ineffective and that they are required to preserve these laws. Israel maintains this position despite assertions from both the British and Jordanian authorities that the law was repealed, and declarations from UN bodies that the practice contravenes international human rights and humanitarian law *inter alia* Articles 33 and 54 of the Fourth Geneva Convention, which prohibit collective punishment and destruction of property. [127] The UN has insisted that the practice be ceased immediately.[128]

88. DER 119 grants military commanders broad discretion to decide whether to

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[123] Ibid.

[124] HaMoked. 20.03.2016. *Alternative Report by HaMoked: Center for the Defence of the Individual to the UN Committee Against Torture for Consideration of Israel's Fifth Periodic Report* (hereafter '*HaMoked. Alternative Report.*') Para. 60. Available at: http://www.hamoked.org/files/2016/1160540.pdf

[125] *Farrell. Israeli Demolition*. 871, 874-5

[126] Defence (Emergency) Regulation 119. 1945. Available at: http://www.hamoked.org/files/2015/2204_eng.pdf

[127] UNCCPR. 21.08.2003. *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant*. Para. 16. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2F78%2FISR&Lang=en

[128] HaMoked. *Punitive house demolitions timeline* (hereafter '*Hamoked Timeline*'). Available at: http://www.hamoked.org/files/2014/114633_eng.pdf

execute a demolition.[129] The demolition is considered an "administrative" action, and, thus, there is no judicial review of this decision.[130] The commander must only have "reason to suspect" and be "satisfied" that an offense was committed.[131] The Israeli Supreme Court has ruled that Palestinians, whose homes are slated for demolition must be given prior notice, are entitled to a hearing with the military commander prior to the demolition, and they may appeal to the Supreme Court if the military commander rejects their arguments.[132] Despite these rulings, homes are frequently demolished without prior notification, and the Israeli Supreme Court has rarely overturned Military Commanders' demolition orders.[133]

89. Although international humanitarian law prohibits collective punishment,[134] nearly all of those dispossessed and displaced by punitive home demolitions had no role in planning or executing attacks, and statistics suggest that fewer than 10 percent of alleged offenders owned their demolished homes. Most of these homes belonged to a relative or were rented.[135] In a report submitted to the UN Committee Against Torture, HaMoked, who represents Palestinian families whose homes are slated for demolition, explained that:

> Israel has been targeting homes for demolition regardless of whether the suspect/assailant has already been killed or captured by the Israeli forces; regardless of whether he was unmarried and lived at his parents' home; even if he only visited his parents' home sporadically while living elsewhere for years. Moreover, Israel seeks to demolish homes even when there is substantial cause to doubt that the man actually perpetrated a deliberate attack against Israelis.[136]

90. The legality of these demolitions has been challenged in the Israeli Supreme Court on the basis that they are a form of collective punishment, yet the court has rejected this assertion. Though the justices recognize that innocent family members of an offender will be forced to "suffer the consequences of his deeds," they deny that this constitutes collective punishment and claim, instead, that home demolitions serve as a "deterrent" and will prevent future

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[129] *Farrell. Israeli Demolition*. 896

[130] Dan Simon. 1994. *The Demolition of Homes in the Israeli Occupied Territories* (hereafter '*Simon. Demolition of Homes*'). 19 Yale J. Int'l L. 1, 15-16

[131] Ibid. 1, 15-16

[132] *HaMoked Timeline*

[133] Hamoked. *House Demolitions*. Available at: http://www.hamoked.org/topic.aspx?tid=main_3

[134] See International Committee of the Red Cross (ICRC). "Fourth Geneva Convention". Article 33; International Committee of the Red Cross (ICRC). "Fourth Geneva Convention". Article 50

[135] *Farrell. Israeli Demolition*. 899

[136] *HaMoked*. *Alternative Report*. Para. 62. Available at: http://www.hamoked.org/files/2016/1160540.pdf

attacks.[137] Despite this stated aim, Israeli authorities suspended the practice of punitive home demolitions in 2005 after a military committee determined that the policy was ineffective, did not deter future Palestinian attackers, and, in fact, contributed to feelings of hostility and vengeance, thereby motivating future attacks.[138] Despite its ineffectiveness, the policy was resumed in 2008 and has been used with increasing frequency since the summer 2014.[139]

91. Between July 2014 and August 2016, Israeli authorities carried out 40 punitive demolitions. These demolitions have resulted in the displacement of 309 people including 135 children.[140] Yet, it is not only these families who are affected. Such demolitions frequently result in damage to neighboring properties, and during this same time period an additional 257 individuals, including 113 children, were affected by nearby demolitions.[141] These "affected" people are not entitled to compensation for their lost or damaged property, even though they were not the demolitions' intended targets.[142]

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[137] Shane Darcy. Al Haq. 2003. *Israel's Punitive House Demolition Policy; Collective Punishment in Violation of International Law*. 38. Available at: http://www.alhaq.org/publications/publications-index/item/israel-s-punitive-house-demolition-policy

[138] Amos Harel. Haaretz. 17.02.2005. *IDF Panel Recommends Ending Punitive House Demolitions for Terrorists' Families*. Available at: http://www.haaretz.com/idf-panel-recommends-ending-punitive-house-demolitions-for-terrorists-families-1.150620

[139] B'Tselem. 26.11.2014. *Background on the Demolition of Houses as Punishment*. Available at: http://www.btselem.org/punitive_demolitions

[140] *OCHA oPt. Demolition Database*

[141] Ibid.

[142] The Jerusalem Magistrates' Court denied a tort claim submitted by HaMoked on behalf of the family of the perpetrator of the attack on the Sbarro restaurant in 2001, whose house was demolished by the army: The Court ruled that the demolition was conducted in a professional and considerate manner and with the maximum degree of care, unparalleled in other armies. HaMoked. 20.05.2009. Available at: http://www.hamoked.org/Document.aspx?dID=761_update

Case Study #5: Anonymous | Qalandia Camp | transferred in November 2015

Coercive environment created by:

Punitive home demolition

I am married with two children. My eldest daughter is 4 years old, and the youngest is 7 months old. We used to live in Qalandia Refugee Camp [situated in the West Bank between Jerusalem and Ramallah]. My husband and I got married in 2011. I am from Betounia [a town nearby Ramallah], and he is from the Qalandia area. He was in an Israeli prison for more than two years before we got married. He used to be a construction worker. We rented our apartment in the camp from my uncle. We lived there for 5 years, ever since we were married.

My husband and his family are refugees. I was not a registered refugee before the marriage. Although my mother is a refugee, but we could not register with her because my father is a not a refugee, and the UNRWA didn't let us register under my mother's card as the UNRWA's registration system follows the male line. Now I am, as a wife of a refugee, considered a registered person entitled to some assistance. However, my daughters are registered refugees.

My husband, Mohammed, is 30 years old, and he participated in Dair Bzee' attack [in June 2015 a colonizer was shot dead and another was injured]. I was told he shot a colonizer, and I was shocked. I didn't know anything about it. He was a quiet person, and when he used to express his resentment towards Israel, I used to stop him and not let him continue his words. He is in prison now. I was seven months pregnant when he committed the killing. It was the first Friday of Ramadan [Islamic holy month], on the 19th of June 2015. He never told me that he was going to do such a thing.

My husband was arrested on the 2nd of July. He wasn't home at the time. He went out with his friends after Iftar [the breaking of the fast]. Later at night, his mother and brother knocked on the door and told me that my husband got arrested along with two other guys. We were expecting the Israelis to come at any point after that, but they did not come at first.

[This experience] was very difficult for me to handle. I decided I wanted to give birth before my due date and I had a cesarean section so that I could make sure I gave birth before they demolished my house. The only thing I wished for was to have my husband by my side; he was very happy when we had our first child, and I could not imagine how happy he would have been if he was there next to us.

Over a month later - and a week after I gave birth to my youngest daughter - Israelis broke into the house at night. They blew up the door to come in, and the next thing

I knew, they were standing in my bedroom asking me questions of who I am, who owns the house, who are my neighbors and where my husband was. They then asked me to leave the house and go downstairs to my elderly landlady's house. I started to get ready and one of the soldiers tried to carry one of my babies, but I stopped him and said that I would carry them both, and I asked him to stay away from them. They spent almost two hours at my house, but did not do anything. They only took photos of the place.

Ten days later, they came back. I was in the house with my daughters and my sister was staying over. A soldier gave me a piece of paper [a demolition warning] and told me that he wanted to take a picture of me holding it. I asked him to bring me my head scarf before taking the picture, and so he did. I was never asked to sign a consent letter when I received the warning.

I told them many times that the house is not our own house, and that it belongs to the woman downstairs, who lives in the building with her daughter. They asked me to take them to her. They asked my landlady if the house belonged to her, and she told them it did. They then gave her a warning as well. The warning said explicitly that the third floor of the building was targeted for demolition and confiscation. We have since been told that the translation between the Hebrew version and Arabic version of the warning is somehow different. In Hebrew, it says demolition only. But in Arabic, it says demolition and confiscation; which means we are not allowed to rebuild the home or to live in it.

We filed a lawsuit at the Israeli court after receiving the warning, but that did not work at all, as the family of the settler who was murdered asked the court to insist on demolishing the house. We saw announcements on Facebook on various pages that Israelis were going to demolish our house within the next 48 hours. We had a lawyer through Hamoked [an Israeli human rights organization]. He told us that the court rejected our appeal because the family of the settler who was killed insisted on demolishing the house.

And indeed, after 48 hours [on 16 November 2015], they broke into the building at around 4:00 am. They asked us to evacuate immediately and go to a nearby playground/field. I told them it was too cold for my kids to stand outside in the field at this hour, so I suggested going to my neighbor's house. They refused and insisted on us going to the field, saying that we need to go further away because it is safer for the children. We left the house, and they started planting the bombs in the house. In the meantime, they were calling on speakers for everyone in the neighborhood to evacuate and leave their houses and go towards the field. There is a video available online of the explosion of the house. [Although the demolition order specified that] they were going to demolish the third floor where I was living, the entire building was affected by the demolition, so we all had to move out. The entire building is now completely demolished. An architect visited the property and said there is no way for it to be repaired at this point.

A lot of houses nearby were also affected by the demolition. Some of these residents

did not return because the damages were too severe, so they had to find other places to live. Other families got help from UNRWA and they repaired the damage to their houses. At least 60 people were affected by the demolition, 12 or 13 of them were living in the same building as me.

After the demolition, the Popular Committee for Public Services of the Camp made announcements on speakers around the neighborhood, asking if people needed help in repairing damage to their homes caused by the demolition, and that's how some people managed to go back to their homes.

I have received help from various human rights organizations, but cannot recall all their names. Some came only to gather information. UNRWA gave us an allowance for the damaged furniture, and the Red Cross, and the Palestinian Ministry of Public Works and Housing also provided aid.

Now, I am living in my family's house in Beitunia, Ramallah. I came here after I lived in Kafar Aqab [a neighborhood close to Qalandia Camp, inside the Jerusalem municipality] for a while. I was renting an apartment, but I could not stay because it was too far from everything. I had to take a private cab wherever I wanted to go. It is just too far. When my daughter gets ill, where should I leave my other child? So I thought the best thing to do is come back and live with my parents. It's easier for me here at my parents because they can take care of my daughters when I am away. We have been here for only two weeks. We are not settled yet. Our lives are not settled, and it will be like this for a while.

My 4 year old daughter was influenced by these events in a very deep way. She was very attached to her father. I tell her that her father is in jail and that our house was demolished because I do not want my daughter to find out from somewhere else. She became a very angry person and very stubborn.

They are Zionists, this is how they operate. They want to get revenge. My husband keeps telling us that he can manage to live in prison, and that we need to take care of ourselves now. Of course there is always going to be fear that they will demolish a new house if we build one, but that does not really matter, because in any way, we need to survive and keep going.

Case Study #6: Anonymous | Nablus | transferred in November 2015

Coercive environment created by:

Punitive home demolition

I have three young children, two girls and a boy. I am originally from al-Lid [a Palestinian city which was depopulated in 1948]. My husband is originally from Nablus. I am a registered refugee with UNRWA. My husband and children are not allowed to register as refugees. I'm the only registered refugee here. We were married in 2007, and we first lived with my in-laws, then we rented an apartment, and after a while we bought an apartment. Finally, we built a house in the Nablus suburb of al-Dahiya al-'Olya, which is close to here. That house was demolished.

We had worked very hard to build the house. My husband was a taxi driver, so he didn't earn much money. We had to take a loan to build it, as well as borrow from our families to start slowly finishing up the place so we could move in. My husband and his brothers bought the land. It is registered in their names. We built our house, and my brother in law built his own house on top of ours. We were very happy to finally have our own home. It was just so important for us. The fact that we owned that house; it made it a home for us. We were not renting or anything; it was totally our own place. We were very happy living there; each of my children had their own rooms, and my kitchen was big. It was perfect.

It was only our family living in the house. My children attend a nearby school called "Kawthar Ya'ish" – their dad used to give them a ride back a forth. We didn't live there for too long – only one year. When my husband was arrested, it was our first year anniversary staying in that home.

When they arrested my husband, we were staying at my family's house. They came at night and took my husband saying that he was one of the people who participated in the Itamar killings [two colonizers were killed in East Nablus on 1 October 2015]. I later found out that my husband had been involved. He never said anything to us before, but he was definitely a part of it.

They took him to our house at 4:30 am, and they destroyed everything there. I stayed at my parents' house. When they came, they pushed my mother and were very rude. My dad had been killed by Israelis in 2002, and on that night, they were screaming at us saying that my dad was not a noble man and that he was a donkey. We were very angry and hurt in so many ways. The soldier was threatening to kill me. I told him that he can shoot me, I could not care less. And I asked if he wanted to shoot my children as well, then another soldier came between us and told him to step back. It was a very nasty night. They were aggressive.

After everything was done, my mother went with me to our house, and there I found everything destroyed; it was a huge mess. But that wasn't it for them. They came back a couple of days later, and they again broke into the house and searched everything. It was worse than the first time. I was going crazy, but I told my mum that it was fine and I will clean up the place and live in it with the kids. So I did; I cleaned up and everything was fine again - not as good as before, but manageable. It was like a nightmare; they came back again and destroyed everything. They came three times during one week.

And the fourth time they came in, they left the demolition warning in the kitchen. The time period between delivering the warning and the actual demolitions took one month and 10 days exactly. The warning specifically said that the demolitions and confiscation would only include the ground floor, which is our house. The warning said "evacuate, demolish and confiscate"; so we are not allowed to come back and live in it, or build another house in the same location. The warning said that we had only one week to evacuate, but we never knew when they would come and carry out the demolition.

The Palestinian Authority (Ministry of Detainees) helped us find a lawyer [to try to stop the pending demolition]. One day, I was at the court attending a session for my husband's trial. It was very late, and I received a call on the way back home from my lawyer. He told me to evacuate and leave the house as soon as possible. I told him that I had already been staying at my parents' home for the past few days. He said that our appeal was rejected by the court and that I only had a few days until they would come and demolish my house. I could not believe it; I broke down and could not handle the news.

The next day, in mid-November 2015, I was at my parents' house and I woke up to the sound of mosques calling people to gather and try to stand against the Israeli soldiers who are coming to demolish our houses [additional demolitions took place on that day that belong to other accused in the Itamar incident]. I was fighting with my family because I wanted to go to my house and be there, and they were not letting me go anywhere. I finally managed to go. I started walking towards my house, and the area was full of soldiers. They were planting bombs in the house and getting ready to blow it up. I saw this view and I could not handle myself, so I broke down. My in-laws came and grabbed me and tried to hold me back, I could not resist them anymore so I surrendered and went back home with them.

My neighbors were asking the soldiers why they would demolish the house if they already had my husband, and that it was enough already. It was not my fault or the kids' fault. Their response was that my husband was a big "vandal" and should be punished in all ways, even if that involves punishing his family who were not involved.

Israeli soldiers and the Civil Administration demolished the house, and they did it in a horrible way. I had pictures of my husband and children up on the walls, and they tore them apart. They put knives in the pictures as if stabbing the person. They

also tore pictures of my children; they would tear the picture from the neck and put a knife in between. They also got our shoes and put them in line, stabbing a knife in each shoe. It was horrible to see that. No one was there during the demolishing of my house, except soldiers and colonizers from around the area who had come to watch.

My brother-in-law who lived in a home above was also arrested. His wife and kids ran away because they were scared. They did not stay at the house, and nobody was there at that time. My brothers-in-law were arrested on the same day as my husband. My brother-in-law's home which is above ours was not demolished, but of course it got damaged as well, because of the power of the explosives they planted in my house.

The Red Cross helped me a lot in paying the rent for the apartment we are in right now; they paid for an entire year. UNRWA also gave me money to buy furniture and things for the house. The Governorate of Nablus also gave us money to cover the rent. [The other families whose homes were demolished the same day as mine] were all transferred. We had a public campaign for all of us [families displaced by punitive home demolitions]; and they later bought/built new places for themselves. I am also building a new house, which is next to the one we had.

In the beginning I was moving between my parents and my in-laws' house, but I had to tell them that I needed to settle and live on my own with the children until my husband comes back. I chose this apartment because my kids' school is right down the hill. The lease is in my name. My plan is to stay here for only a year until I finish building my new house. You never know when my husband will be released from prison. We still have hope. So it is very important to stay close.

This apartment has a view that shows my old demolished house. That area means a lot to me, I really love it. [But] this location is very far away from the city center and you rarely find transportation coming up this way, and when we need to go places, we have to go further down to catch a cab. It is also expensive to take cabs from here to get to the middle of the city, where we need to go to buy things for the house and run errands.

My first wish is for my husband to be released. And I hope I will go back and live in my own house and have a normal life again. I also want to go to school. I am 27 years old and should have finished school already, but I couldn't continue, and I really want to continue and get my degree. I think I will register this year in the fall. What else can be done? I need to do that to survive. We all know how Palestinian women struggle to live. Every day is a battle for me, and I am just surviving.

I just wish to go back. Even though my neighbors love me and I love them back, but I want to go back home; this is not home for me. I was settled and independent there.

[Because of the risk of colonizers' violence] a lot of people have told me not to live there [next to her old house], but this is our land. And I have been asked if I want to buy an apartment somewhere else, but I do not want to. I only want to live back there. If we all surrender to what Israel dreams of, there would be no such thing as

Palestine. We need to stay in our lands instead of running away because of fear.

You never know if the new house will also be demolished. We always fear that they will come. Their policy of revenge is mysterious - you never know what they might do. Even though I am building next to my old home, and not rebuilding the same house, I still fear that they would come and demolish it. But in any case, I would still try and build my house again and again.

We should not be punished for this, not even the house. For us, it doesn't make sense why they had to blow up the house and get us to leave. They think that Palestinians will stop resisting the occupation once they trap us in the corner. This is very wrong; this will only drive the new generation to resist more and have more will to stay in this land.

Legal Analysis

The forced displacement of protected persons by expulsion or other forms of coercion

92. The selected case studies concern persons that may be considered as 'protected' under international law on account of their status as members of an occupied civilian population.

93. The selected case studies suggest that the respective instances of displacement contained therein may be considered as 'forced' in nature. Israeli authorities not only demolish the homes of these protected persons, but also, by means of indefinite confiscation, prevent Palestinian land and homeowners from rebuilding their demolished homes and returning to their lands. Affected Palestinians are thus forcibly expelled from their homes and forbidden from returning to their land.

94. In case study #6, the affected individual indicates an intention to return to live in an area immediately adjacent to the site from which they were forcibly displaced. Should this intended movement take place, such a scenario would still appear consistent with a finding of forcible transfer, and it is recalled, as per the ruling of the Trial Chamber in Simić, that there exists no criterion of 'distance' in assessments of forcible transfer. Rather, the movement in question is sufficient if that movement prevents the affected person(s) from exercising fundamental rights relating to their property. Specifically, in such an instance, both the right of the individual to stay in their home and the right not to be deprived of their property by way of being forcibly displaced have been clearly violated.

95. The forced displacement outlined in the above case studies is attributable to Israel on the basis that punitive demolitions are performed by state actors in accordance with official Israeli policy and legislation.

From areas in which the affected persons were lawfully present

96. To BADIL's knowledge, that the individuals interviewed for the above case studies were lawfully present (understood as per the ruling in *Popović et al*) in their respective areas is uncontested.

The removal taking place without grounds permitted by international law

97. There exists no reasonable basis to suggest that Israel's forced displacement of Palestinian civilians by means of punitive house demolitions is conducted under grounds permitted by Article 49(2) of the Fourth Geneva Convention. Such demolitions qualify as a form of collective punishment as they target and affect whole families and communities, i.e. individuals who played no role in the alleged act for which the punishment is given, which is contrary to Rule 103 of Customary International Humanitarian Law and Article 33 of the Fourth Geneva Convention.

98. Such displacement is clearly not undertaken for the 'security of the population', understood as a scenario whereby an area is in danger as a result of military operations or is liable to be subject to intense bombing. No such military operations or risk of bombing are present, thus also precluding any suggestion of the displacement being permitted on the grounds of 'military imperative'.

99. Nor can the displacement in question be said to be required for humanitarian reasons, as those factors from which the Palestinian displaced persons in question are forced to leave are created and engineered by the policies and actions of the Israeli occupying forces.

100. In addition, 'evacuation' as per Article 49 of the Fourth Geneva Convention refers to a temporary period of displacement and, therefore, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption. In its destruction and confiscation of Palestinian homes and land, it is plainly apparent that Israel does not seek to facilitate the return of Palestinians displaced due to punitive home demolitions, while the absence of concerted military hostilities would also appear to render Article 49(2) inapplicable to the cases in point. Further, there exists a clear failing on behalf of the Israeli occupying forces to ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated, as is required under Article 49(3) of the Fourth Geneva Convention as part of any lawful evacuation.

Demonstrable plan/purpose

101. That the transfer of Palestinians by way of punitive home demolitions - including the persons outlined in the selected case studies - is conducted in the context of an Israeli plan or purpose to affect such transfers cannot be reasonably contested. Punitive home demolitions are a stated Israeli government and military policy, affirmed by the Israeli Supreme court, and subject to periodic suspension and reinstatement, also declared publically. Forced displacement is a natural and intended consequence of Israel's punitive demolishing and sealing of Palestinian homes, as well as the attendant confiscation of the land in question, thus preventing former residents from rebuilding there.

Chapter Six

FORCIBLE TRANSFER OF RESIDENTS OF 'SEAM ZONES'

Chapter 6

Forcible Transfer of Residents of 'Seam Zones'

102. Seam zones are sections of Palestinian land situated within the occupied West Bank which have been isolated as a result of the erection of the Israeli annexation and Separation Wall, with their location falling in-between the Wall and the 1949 Armistice Line ('The Green Line'). Nearly half of all Israeli colonies - spread across East Jerusalem and the rest of the West Bank - and the vast majority of colonizers are located within these areas.[143] 85 percent of the Wall is constructed within the West Bank, and when completed, seams zones will account for almost 10 percent of West Bank territory.[144] Israel has designated the seam zones as closed military areas, and an Israeli-controlled permit regime severely restricts Palestinian access to them.

103. 150 Palestinian communities have land located in seam zones, and 11,000 Palestinians (excluding residents of East Jerusalem) live there. This includes 1,400 Palestinians living on the Jerusalem side of the Wall who are denied residency, as well as the right to work in and access services from the municipality.[145] When completed, the Wall will isolate an additional 25,000 Palestinians from the rest of the West Bank.[146]

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[143] HaMoked. 03.2013. *The Permit Regime; Human Rights Violations in West Bank Areas Known as the "Seam Zone"* (hereafter '*HaMoked. Permit Regime.*'). 12. Fn.24. Available at: http://www.hamoked.org/files/2013/1157660_eng.pdf

[144] OCHA oPt. 07.06.2014. *10 Years Since the International Court of Justice (ICJ) Advisory Opinion*. (hereafter '*OCHA oPt. 10 Years*') Available at: https://www.ochaopt.org/content/spotlight-10-years-international-court-justice-icj-advisory-opinion

[145] Ibid.

[146] *OCHA oPt. 10 Years*

104. Palestinians residing in seam zones must apply to the Israeli Civil Administration for a permanent resident ID in order to remain on their own land. Their movements are tightly controlled through the use of checkpoints and a permit regime, which in turn intrudes upon all aspects of their day-to-day activities and greatly compromises the quality of life available. Israeli restrictions serve to cripple local Palestinian economies, generating growing levels of poverty which is further compounded by inadequate or non-existent health, education and sanitation amenities. Essentials such as eggs, meat and dairy products require permits in order to enter the seam zones.[147] Israel denies seam zone residents access to both Palestinian Authority and Israeli municipal services, and has prevented the Palestinian Ministry of Education from effectively delivering textbooks and furniture to schools within the seam zones.[148] Israel prohibits ambulances and cars from entering these areas, limiting Palestinians' access to healthcare facilities on the other side of the Wall.[149] Pregnant women residing within the seam zones frequently leave their homes weeks in advance of their expected delivery to stay with family or friends on the West Bank side of the Wall to ensure access to medical care.[150]

105. In addition to economic hardship and lack of access to essential services, Palestinian seam zone residents are isolated from friends and communities living on the other side of the Wall. However, the human impact of seam zones is not limited purely to those who reside within such areas. Those seeking to visit friends living in seam zones must apply for permits. Frequently, extended family and friends are unable to attend weddings and funerals inside seam zones, while Palestinians living outside the seam zones are reluctant to marry those who live within, and vice versa. To do so would require the spouse from the seam zone to risk losing their entitlement to permanent residency inside the seam zone and ties with their family and community, or, alternatively, the spouse from the West Bank side of the Wall would have to go through an arduous and complicated process of seeking permanent residency in the seam zone, thereby losing their own familial, social, and professional ties.[151] A report from the World Bank estimates that 170,000 Palestinians in the West Bank including East Jerusalem are affected directly or indirectly by Israel's seam zone policy as they are either living in

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[147] Ibid.

[148] Lina Odgaard. Al-Monitor. 02.07.2013. *Israeli Wall Creates Limbo for Seam Zone Palestinians* (hereafter '*Odgaard. Israeli Wall Creates Limbo.*'). Available at: http://www.al-monitor.com/pulse/originals/2013/07/west-bank-seam-zone-israel-wall.html; UN Secretary General. 20.01.2016. *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*. Available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A_HRC_31_44_E.doc

[149] *Odgaard. Israeli Wall Creates Limbo*

[150] *HaMoke*d. *Permit Regime*. 18-19

[151] Ibid. 61-62

seam zones, are encircled by the Wall, or have relatives and/or land on the other side of the Wall.[152]

106. Since its establishment, Israel has been relentlessly expanding the restrictions which it imposes on Palestinian movement. Currently, there exist 101 different types of permits relating to Palestinian movement, whether within the West Bank (including East Jerusalem), between the West Bank and Israel, the West Bank and the Gaza Strip, or beyond internationally recognized borders.[153] Thirteen of these permits apply to seam zones, and are regulated by the "Standing Orders for the Seam Zone"; a draconian and complex military legislation published solely in Hebrew.[154] Those seeking permits are forced to navigate this system by trial and error or rely on expensive private lawyers or upon human rights organizations which often have limited resources to provide counsel and assistance.

107. Each permit application is different and has specific requirements, and those seeking access to the seam zones for multiple purposes must apply for multiple permits. Those who use their permit for purposes beyond those specified risk imprisonment of up to five years.[155] Despite the efforts and expense required for obtaining a permit, they are temporary, including the 'permanent' residency IDs. The majority of permits are valid for 3 months, with a maximum duration of only two years. Israel does not offer an expedited or automatic process for renewal, and those seeking to extend their permits must file new applications. Applicants do not receive a response until their previous permit has expired, creating lapses during which affected Palestinians are prevented from accessing the seam zones.[156] Israeli government data indicates that the number of seam zone permit holders decreased from 31,573 in 2007 to 23,805 in 2009 (a 25 percent decrease), however the number of permits issued remained the same, indicating that in addition to granting fewer people access to the seam zones, Israel has shortened the period of time for which permits are valid.[157]

108. Israel frequently denies permits to Palestinians farmers whose land lies within

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[152] World Bank. 11.2003. *The Impact of Israel's Separation Barrier on Affected West Bank Communities. A Follow-up Report to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC).* Follow-up Three World Bank Report. Available at: https://www.ochaopt.org/documents/hepg_wall_report_update3.pdf

[153] Chaim Levinson. Haaretz. 23.12.2011. *Israel has 101 different types of permits governing Palestinian movement*. Available at: http://www.haaretz.com/misc/article-print-page/israel-has-101-different-types-of-permits-governing-palestinian-movement-1.403039?trailingPath=2.169%2C2.225%2C2.226%2C.

[154] HaMoked. 18.5.2014. *HaMoked to the military: a selection of provisions in the revised "Standing Orders for the Seam Zone" must be amended* (hereafter '*HaMoked to the military*'). Available at: http://www.hamoked.org/Document.aspx?dID=Updates1299

[155] *HaMoked. Permit Regime*. 10, 29-31

[156] Ibid. 11; *HaMoked to the military*

[157] *HaMoked. Permit Regime.* 16-17

the seam zones on the basis that they lack the required documentation proving ownership of the land, or their farmland is deemed too small to qualify. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), from 2010-2014, half of all permit applications to access farmland were denied.[158] OCHA reported that in 2013, of 81 gates which regulated access to farmland, Israel only opened nine daily, an additional nine weekly, and only permitted access through the remaining 63 during the olive harvest season (6 weeks in October and November), thus preventing farmers from tending their crops.[159] When gates *are* open, entry and exit is limited to a few hours in the morning and afternoon. Although not prohibited by the Standing Orders, soldiers frequently prevent farming equipment such as tractors and diggers from entering the seam zone.[160] Due to these restrictions, farmers have shifted from labor intensive to rain fed and low yield crops.[161] Because Israel often only allows farmers access during the harvest season, even those crops requiring less maintenance, such as olives, yield considerably less (40-60 percent) than those on the other side of the Wall.[162]

109. Besides the constraints placed on Palestinian farmers in cultivating their land, Israel imposes restrictions on business owners and their employees which hinder the ability to operate and work within the seam zones. Businesses in these areas are inaccessible to Palestinians living on the other side of the Wall, drastically limiting the potential customer base. Additionally, business owners and employees are themselves subject to the permit regime, and in order to receive a "business permit" (required for business owners) or an "employment permit" (required for employees including agricultural laborers), the Israeli Standing Orders require them to prove that access to the area is "necessary" to the business. At most, permits are valid for one year for business owners and six months for employees, requiring frequent resubmission of permit applications and imposing severe burdens which discourage business owners and employees from operating and working in these areas.[163]

110. As a result of the above practices and policies unlawfully employed by Israel in relation to seam zones, life for many Palestinian residents - as well as a wide range of individuals reliant upon these areas - has become unbearable, with many such persons forced to relocate east of the Wall.

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[158] *OCHA oPt. 10 Years*

[159] Ibid.

[160] *HaMoked. Permit Regime.* 90-91

[161] *OCHA oPt. 10 Years*

[162] UN Secretary General. *Report on the Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*. 20.01.2016. Para. 63. Available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A_HRC_31_44_E.doc

[163] *HaMoked. Permit Regime.* 63-64

Case Study #7: Arij Abaeid | Nabi Samuel | transferred in 2012

Coercive environment created by:

Discriminatory planning regime and administrative home demolition; lack of employment opportunities; lack of amenities and access to basic services; harassment/violence from Israeli forces and colonizers; fear for safety of family members; social and economic implications of movement restrictions

Nabi Samuel lays within the West Bank, but after the construction of the Wall, Israel has [de facto] annexed it. Everything Israel is doing is wrong and is to cause displacement of Palestinian residents because Nabi Samuel is a very strategic area. They are doing this to us because their intentions are to put their hands on this specific land. They consider this area as a nature reserve, or at least this is what they hope for. There were announcements in newspapers saying that Nabi Samuel is an official Israeli Nature Reserve and it has no Palestinian residents in that area.

These houses in Nabi Samuel [originally] belonged to people who are currently living in Jordan. But of course, during all that time, we built new constructions so as to have additional rooms and enhance the size of the houses to accommodate our large families. The former residents are aware of the difficult situation happening here and, therefore, do not mind us living here. All of my family is here in Nabi Samuel - my parents, my uncles, my aunts and everyone we know. My husband is also from Nabi Samuel, and his family is still here.

My family's house in Nabi Samuel was demolished in the mid-nineties, as we were told we had no building permit for an addition to the property. It was an old house, and, before the demolition my father had added an extra room. But when they demolished the new room, they included the old parts as well.

After the demolition, we had to move for five years to al-Jeeb (a nearby village), and then we returned to Nabi Samuel. In 2007, I finished Tawjihi (senior year of high school), and then went to college for 2 years before I got married. In 2012, my husband and I had to move from Nabi Samuel because we were not allowed to build a house for ourselves in the area - not even one room so that we can stay among our family. So, we left and moved to al-Jeeb. The same thing happened to [my friend] Meriam. She has quite a few children, and even though she has a house, she had to move because the house is too small to fit all of her children. Al-Jeeb is the closest village to Nabi Samuel which is why most people from Nabi Samuel move there.

Here, in Nabi Samuel, I feel comfortable. I go wherever I want. I know everybody, and everybody knows me. I feel comfortable to wear what I want, and I go out during

the day or at night without feeling scared. But there, in al-Jeeb, I have no family, and I feel like a stranger. I don't feel comfortable. I have to come to Nabi Samuel on a daily basis so that I can see my family.

People leave Nabi Samuel to look for a better living environment. There hasn't been any intention to make things better in Nabi Samuel; therefore, people basically have no choice but to leave. This community is very limited and cannot be developed in terms of space, facilities, homes and all of the basic necessities one should have.

There is a very high unemployment rate here. And if someone wants to work in Jerusalem, you basically can't, because you are not allowed to work without a permit, and in addition to that, in the event one was able to obtain a permit, going there is expensive because there are no [affordable] transportation methods available, on top of the fact that the wages are low.

There are many conditions required for a work permit. For instance, men must be married and older than 27 years old. Most of Nabi Samuel's men who are older than 27 are not married due to unemployment and not having a job prohibit them from starting a family. Old men, like my father, are prohibited from obtaining permits because they previously tried to sneak in and were caught.

There is lack of access to education, no grocery shops, no permits to build and extend houses, and there are checkpoints surrounding this area. Whenever you plan to get something new, or purchase food or get a *service* (shared taxi), you need to coordinate with the Israelis and get it sorted.

Residents try to have weddings done outside of Nabi Samuel, because they can't host many people here. And sometimes you want to invite people to visit, but they don't have access to Nabi Samuel, so basically you won't be able to do it in your hometown. And when someone dies, families usually have three days open for condolences to be received at their home. People are allowed to come the first day to the funeral and give condolences but are prohibited from coming after that.

In al-Jeeb, there are a few things that are better than in Nabi Samuel. For example, in terms of transportation, you can easily find transportation there. In Nabi Samuel, there is no transportation at all. There are also more grocery stores and medical centers and private clinics available in al-Jeeb. In al-Jeeb,, but in Nabi Samuel, there is no such thing. For instance, my son has a medical condition which causes seizures, and he needs to have access to medical care available whenever such seizures occur. One time, while in al-Jeeb, I needed to take my son to the hospital at 5:00 am. I took him and went to the street for a taxi. I found one, and we went to the hospital immediately. I can imagine if this happened if we were living in Nabi Samuel, I wouldn't have managed to get to the hospital as fast as I would have needed to.

Although I have everything available in al-Jeeb, and it's easier there, I would rather live here in Nabi Samuel. Even if I had to live in a tent, I'd live here and nowhere else. When I come here, I don't come here only for my family. I come here to visit

my hometown. I miss this place, and I miss every little part of it. I come here and ask my friends to come along with me and we start walking around just because we love it. I adore this place. I really do.

We experience a lot of closures and blockades. Sometimes the army will close down the checkpoint and not allow anyone to pass because of false alarms regarding security concerns. For instance, I experienced this last week. They suspected an unusual movement near the checkpoint, and the next thing I knew, I was stuck. A 20 minute distance can take up to 2 or 4 hours.

People have also had to leave Beit Iksa [a nearby village which has a large number of residents with Jerusalem residency] because they work in Jerusalem, but the village has now been closed and people were not able to reach Jerusalem anymore. Therefore they had to leave Beit Iksa to be able to reach their places of work. Most of them went to live in Shu'fat and Beit Hanina [areas in East Jerusalem]. They do visit often, but it's not their main residence anymore. They left because they had to go to Jerusalem on a daily basis, and they didn't find it convenient to go a very long distance to reach Jerusalem. It is easier for them to live in the Jerusalem area.

Our young men also experience a lot of harassments, whether on the bus, or in the streets. For no reason, soldiers force them to strip and search their belongings and humiliate them at the checkpoints on a daily basis. If someone forgets his or her ID card on any day, they are forbidden to enter or cross the checkpoint, even though the soldiers can access our personal information and have a copy of our identification cards available in their system and computers. It is just a way to humiliate people. Once, I forgot my ID card, but the soldier knew and recognized me. He took me to the investigation room and pulled up all my personal information from the system. But, when my brother forgot his ID card, the soldiers held him in custody until the next day. Once my father tried to get in a pack of barley for his sheep, and they held him in custody until the next day because he wasn't allowed to bring the barley into Nabi Samuel.

Living here is terrifying and unsafe. When clashes occur in Jerusalem, Israeli settlers come to Nabi Samuel and start getting in the way of residents here. It is easy if a settler wants to harm Nabi Samuel residents, as we have no security services or authority in this area. During this latest Intifada, a very famous Israeli Rabbi was killed, and we were told through media and other resources that Israeli settlers are on their way to Nabi Samuel. A lot of Palestinians went and gathered rocks to prevent these settlers from attacking their houses and families. This violence has a huge impact on the children. For instance, when that incident happened, they brought together all the children of Nabi Samuel to my aunt's house - since it is the oldest house with the biggest doors - to keep them safe. There was a lot of screaming. Mothers couldn't leave their children alone, but at the same time, they were extremely worried for their husbands out there, so they wanted to go along with them.

There have been a lot of violent incidents, especially on the same road where the mosque is. Almost 5 years ago, my brother, who was 17 years old, and his friends

were coming back from work; they had to walk for a bit to reach home. He and his friends were attacked by settlers who were driving by. There are also videos made by my father, showing various harassments and settler attacks in this area. There is one where it shows a direct confrontation between my father and a settler in which my father told the settler to leave because it is his land.

People here feel pressure, fear, and feel unsafe. You never know when you might be attacked by a settler or even get your house demolished. This topic is very sensitive, because it deals with the entire population of Nabi Samuel. When you ask someone from here what do you dream of, their answer would be to extend their houses, and build new rooms to satisfy their needs.

We stay because it is our land. If we leave, it would be easy for them to steal it. Staying here is an expression for us that we exist.

The forced displacement of protected persons by expulsion or other forms of coercion

111. The selected case study concerns persons that may be considered as 'protected' under international law on account of their status as members of an occupied civilian population.

112. The selected case study suggests that the instance of displacement contained therein may be considered as 'forced' in nature. The underpinning factors for the individual's 'decision' to leave the area were stated as economic and social hardships resulting directly from Israeli-implemented closures, movement and building restrictions, limited access to essential services, as well as harassment from Israeli military, police personnel and colonizers. Accordingly, there exists a demonstrably coercive environment, born of a number of factors, which in turn produces displacement of Palestinian civilians which cannot be said to be consensual in nature.

113. The forced displacement outlined in the above case studies is attributable to Israel on the basis that the acts and practices which underpin the coercive environment within seam zones are undertaken and performed by state actors in accordance with official Israeli policy.

114. The Israeli Military Commander - acting under powers bestowed by the Israeli government - is responsible for planning the Wall's route, declaring seam zones as closed military areas, and developing, implementing, and overseeing the permit regime. It is relevant to note that Israel's highest domestic court has recognized that the state's actions with respect to the permit regime "severely violates" the human rights of Palestinians.[164] Further, attacks by Israeli colonizers against Palestinian seam zone residents are neither prevented nor punished by the Israeli government, and contribute to the coercive environment Palestinians are subjected to. As previously discussed, these acts, too, can be attributed to Israel, due to its failure to prevent such acts and its tacit approval of them by failing to adequately investigate and subsequently prosecute the overwhelming majority of offenders.

From areas in which the affected persons were lawfully present

115. To BADIL's knowledge, that the individual interviewed for the above case study was lawfully present (understood as per the ruling in *Popović et al*) in their respective areas is uncontested.

[164] HCJ 9961/03, 639/04. HaMoked: Center for the Defence of the Individual et al. v. The Government of Israel et al. Judgment. Para. 46. English translation available at: http://www.hamoked.org/files/2013/114260_eng.pdf

The removal taking place without grounds permitted by international law

116. There exists no reasonable basis to suggest that Israel's forced displacement of Palestinian civilians from or within the seam zones is conducted under grounds permitted by Article 49(2) of the Fourth Geneva Convention.

117. Such displacement is clearly not undertaken for the 'security of the population', understood as a scenario whereby an area is in danger as a result of military operations or is liable to be subject to intense bombing. No such military operations or risk of bombing are present, thus also precluding any suggestion of the displacement being permitted on the grounds of 'military imperative'.

118. Nor can the displacement in question be said to be required for humanitarian reasons, as those factors from which the Palestinian displaced persons in question are seeking to escape are created and engineered by the policies and actions of the Israeli occupying forces.

119. In addition, 'evacuation' as per Article 49 of the Fourth Geneva Convention refers to a temporary period of displacement and, therefore, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption. There is no indication that Israel seeks to facilitate the return of Palestinians displaced from seam zones, while the absence of concerted military hostilities would also appear to render Article 49(2) inapplicable to the case in point. Further, there exists a clear failing on behalf of the Israeli occupying forces to ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated, as is required under Article 49(3) of the Fourth Geneva Convention as part of any lawful evacuation.

Demonstrable plan/purpose

120. That the transfer of Palestinians from seam zones - including the individual outlined in the selected case study - is conducted in the context of an Israeli plan or purpose to affect such transfers cannot be reasonably contested. The creation and maintenance of seam zones is firmly rooted in official Israeli policy, overseen by Israeli military forces and governed by an officially-sanctioned permit regime, while forced displacement is a natural consequence of the deeply coercive environment found within such areas.

121. This causal chain was explicitly highlighted in the International Court of Justice's 2004 advisory opinion on the Wall, which concluded that "[t]here is also a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall

inasmuch as it is contributing […] to the departure of Palestinian populations from certain areas." They continued, explaining that "the construction of the wall would effectively deprive a significant number of Palestinians of the 'freedom to choose [their] residence."[165]

As also noted by the Court:

> The Special Rapporteur on the Right to Food of the United Nations Commission on Human Rights has also observed that 'With the fence wall cutting communities off from their land and water without other means of subsistence, many of the Palestinians living in these areas will be forced to leave.' In this respect also the construction of the Wall would effectively deprive a significant number of Palestinians of the 'freedom to choose [their] residence'. In addition, however, in the view of the Court, since a significant number of Palestinians have already been compelled by the construction of the wall and its associated régime to depart from certain areas, a process that will continue as more of the wall is built, that construction, coupled with the establishment of the Israeli settlements mentioned in paragraph 120 above, is tending to alter the demographic composition of the Occupied Palestinian Territory.[166]

122. These warnings appear to have now been realized, and in light of the ICJ's advisory opinion, as well as the evident movement of persons on the ground, it is inconceivable that the Israeli occupying forces could have remained ignorant of the forced displacement of Palestinians from, within, and around the seam zones, or the likelihood of future forced displacement resulting from any continuation of such policies. Despite this awareness, the Israeli occupying forces have maintained and reinforced the policies in question.

[165] International Court of Justice. 09.07.2004. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*. Para. 128. Available at: http://www.icj-cij.org/docket/files/131/1671.pdf

[166] Ibid. Para. 133

Chapter Seven

Forcible Transfer by Way of Punitive Residency Revocation

Chapter 7[167]

Forcible Transfer by Way of Punitive Residency Revocation

123. Following its occupation of the West Bank and the Gaza Strip in 1967, Israel immediately set about taking measures to cement its control over Palestinian territory, including the expansion of the municipal boundaries of West Jerusalem by some 70,000 dunums (27 square miles), with the result that 28 Palestinian villages and their lands in East Jerusalem were brought - in full or in part – within this new *de facto* municipality. In 1980, Israel passed legislation to formalize East Jerusalem's annexation under Israeli domestic law. The resulting text - The Basic Law: Jerusalem, the Capital of Israel - declared the city the "complete and united" capital of Israel. This illegal annexation met with swift and unequivocal condemnation from the United Nation's Security Council, which rejected the validity of the annexation and confirmed the status of East Jerusalem as occupied territory.[168]

124. Despite this condemnation, however, Israel has employed a range of inherently discriminatory policies which serve to entrench its hold over East Jerusalem - which as of May 2015 had a Palestinian population of some 300,000[169] - and

[167] This chapter draws heavily from the following resources: Al Haq. 17.06.2010. Ref: 124/2010. *Forcible Transfer of Jerusalem Parliamentarians Demonstrates an Escalation of Israeli Measures to Transfer Palestinians from Occupied East Jerusalem* (hereafter '*Al Haq. Jerusalem Parliamentarians*'.). Available at: hhttp://www.alhaq.org/images/stories/PDFz/Jerusalem+Transfer+of+PLC+Members+with+LOGO[1].pdf; Community Action Center. April 2016. *Punitive Residency Revocation: Revocation of Permanent Residency Status of East Jerusalem Palestinians because of Breach of Allegiance to the State of Israel*. Available at: http://www.cac.alquds.edu/images/pdf/recommended-studies/punitivereport.pdf

[168] *Al Haq. Jerusalem Parliamentarians*

[169] The Association for Civil Rights in Israel (ACRI). 12.05.2015. *East Jerusalem 2015: Facts and Figures* (hereafter '*ACRI. East Jerusalem 2015*'). 1. Available at: http://www.acri.org.il/en/wp-content/uploads/2015/05/EJ-Facts-and-Figures-2015.pdf

achieve a desired Palestinian/Jewish Israeli population ratio inside the city of 30:70.[170] To this end, Israel has vigorously pursued the expropriation of Palestinian land, destruction of homes and property, restriction of expansion and development of Palestinian communities and the mass implantation of Jewish Israeli colonizers. The forced removal of Palestinians residing in East Jerusalem is an integral component in the realization of this demographic objective, and a range of inherently discriminatory administrative measures have been introduced by the Israeli occupying forces which exert a clear and significant pressure upon Palestinians to leave the city.

125. This bureaucratic coercion is manifested in policies of restricted ability of Palestinian parents inside Jerusalem to register their children, thus depriving them of access to basic services and social benefits;[171] rejection of applications for family unification between those in Jerusalem or Israel, and in the remainder of the West Bank and the Gaza Strip,[172] and the acute logistical and legal complications which have arisen with the construction of the Wall, cutting off Palestinian neighbourhoods from Jerusalem. Further, East Jerusalem has become a victim of chronic neglect from Israeli authorities. According to the Association for Civil Rights in Israel:

> For almost five decades, the Israeli authorities – including the Jerusalem municipality – refrained from investing adequate budgets in the Palestinian neighborhoods and even imposed restrictions on the development of East Jerusalem as an urban unit serving the Palestinian public. The outcome is a labor market that does not match the size of the population, very limited areas for industry and a weakened education system. The language and culture gaps between the eastern and western areas of the city and the political tensions between Palestinians and Israeli Jews further restrict the occupational horizon of the Palestinian residents.

126. In 2013, 75.4 percent of all East Jerusalem Palestinian residents and 83.9 percent of children were living below the poverty line, compared to respective figures of 21.8 percent and 30.8 percent among the population of Israel.[173] Some 20,000 houses, constituting 39 percent of all houses in East Jerusalem, lack a building permit, while in 2014, 98 structures in East Jerusalem were

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[170] Israel. Jerusalem Municipality. *Local Outline Plan No. 4: Jerusalem 2000 Master Plan*. Compiled by Eitan Meir et al. Jerusalem, 2004

[171] BADIL. 04.2014. *Forced Population Transfer: The Case of Palestine, Denial of residency*. Working Paper No. 16. Available at: http://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp16-Residency.pdf

[172] Since 2000, Israel suspended at least 120,000 applications for family unification. As a result, many families are forced to either live apart, or live 'illegally' together and under constant risk of arrest. For more information see B'Tselem. 07.2006. *Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories*. Available at : http://www.btselem.org/publications/summaries/200607_perpetual_limbo

[173] *ACRI. East Jerusalem 2015*. 4

demolished, with 208 persons displaced as a result, and just 64 percent of households enjoy official connection to the infrastructure of Jerusalem's water and wastewater network.[174] Despite the deeply coercive nature of such an environment, however, this chapter will adopt a specific focus on the subject of residency revocations, which constitute one of the most effective methods of shifting population dynamics towards Israel's preferred demographic ratio.

127. The majority of Palestinians residing in East Jerusalem are not citizens of Israel, but are instead afforded permanent residency status. This status, however, can be revoked at the discretion of Israel's Minister of Interior, and since Israel's occupation of Jerusalem, the residence rights of more than 14,500 Palestinians have been revoked, with more than half of these revocations having occurred between 2006 and 2015.[175] In 2013, the residency status of 106 Palestinians was revoked, followed by 107 revocations in 2014, including 56 women and 12 minors.

128. Israel has undertaken such revocations on a number of grounds, initially by way of a general policy which stripped residency status from any person "settling outside Israel" for a period of seven years, or who was afforded a status of resident or citizen in a third country. In 1995, however, Israel began to revoke the residency status of Palestinians deemed to have shifted their 'center of life' from Jerusalem, including those who had resided abroad - a classification in which Israel included the Gaza Strip and the rest of the West Bank - for less than seven years and had not obtained a residency status or citizenship of a third country. This new criterion provided the basis for a renewed wave of revocations, and since 1995 more than 11,000 residencies have been revoked.[176]

129. In June 2006, a dangerous new precedent was set. Israel arrested four Palestinian residents of East Jerusalem recently elected to the Palestinian Legislative Council, with an Israeli military court later imposing upon these individuals custodial sentences of between two and four years, and the Israeli Minister of the Interior stating his intention to revoke their residency statuses. The reasoning given by Israel for these revocations was that the individuals concerned were affiliated with the Palestinian faction, Hamas, and that such affiliation represented violation of a minimal obligation of loyalty to Israel, thus implicitly invoking a duty of allegiance to Israel for East Jerusalem Palestinians. Such an invocation constitutes a direct contravention of International Humanitarian Law, as the law governing military occupation explicitly prohibits an occupying power from seeking any such allegiance from members of an occupied population.[177]

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[174] All figures from *ACRI. East Jerusalem 2015*

[175] B'Tselem. 27.05.2015. *Statistics on Revocation of Residency in East Jerusalem*. Available at: http://www.btselem.org/jerusalem/revocation_statistics; Hamoked. 28.02.2016. *Revocation of permanent residency status of Jerusalem residents in 2015*. Available at: http://www.hamoked.org/files/2016/1160430_eng.pdf

[176] B'Tselem, Ibid.

[177] See Art.45 HR, and Art.68(3) IV GC

130. Following their release, the Palestinian officials were each informed that their residency statuses had been revoked, and they were ordered to leave Jerusalem. They were informed that should they choose to remain, they would be considered 'infiltrators'[178] and be liable to imprisonment and/or forced transfer. A petition was subsequently filed at the Israeli Supreme Court on 15 June 2010 contesting the revocations, but at the time of writing the case remains pending.

131. In October 2015, following a new wave of Palestinian struggle and reaction arose throughout the West Bank (including East Jerusalem), and Israel, Israeli authorities have sought to affect the forcible transfer of alleged Palestinian assailants from East Jerusalem by way of revocation of their permanent residency rights. Specifically, on 14 October 2015, the Israeli 'Security Cabinet' issued a decision which held that "the permanent residency rights of terrorists will be revoked". No efforts were made to define who could be considered a 'terrorist', but the following week, Israel notified four Palestinians suspected of committing violent acts against Israeli citizens (three of whom were accused of stone-throwing), that the Minister of the Interior was considering exercising his discretionary power to revoke their residencies on the basis that their alleged acts constituted a "clear breach of allegiance" to the state of Israel. In January 2016, the ministry issued official residency revocation decisions against the four persons concerned.[179]

132. Whether utilized as a punitive measure or on the basis of a 'center of life' doctrine, Israel's revocation of the permanent residency status of East Jerusalem Palestinians is a highly effective means of forcibly removing members of the occupied civilian population. Upon the issuing of such a revocation, the very presence of the affected person(s) inside their own community has been effectively criminalized, with grave sanctions applied to those remaining inside Jerusalem following the revocation of their residency status. Those persons affected - numbering in the many thousands - are, therefore, deprived of any genuine choice in their 'decision' to leave their homes and communities, while such acts take place in the context of an environment already characterized by increasingly choking administrative measures imposed by the Israeli occupying forces upon Palestinian residents.

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[178] Military order 1650 'Order regarding Prevention of Infiltration (Amendment No. 2)', issued by the General Officer Commander of the Israeli occupying forces on 13 October 2009, defines an "infiltrator" as a person who entered the Area unlawfully or a person who is present in the Area and does not lawfully hold a permit. However the definitions given to person, area, and permit render the power of Israeli forces absolute in terms of defining lawfulness concept. In practice, this makes the legality of entry or presence of Palestinians subject to the Israeli commander's discretionary power. For further details, see: http://www.hamoked.org.il/news_main_en.asp?id=904 and http://www.alhaq.org/attachments/article/299/legal-analysis-of-new-israeli-military%20Orders.pdf

[179] Ma'an News Agency. 13.04.2016. *Israel's dangerous new transfer tactic in Jerusalem*. Available at: https://www.maannews.com/Content.aspx?id=771111

Case Study #8:
Mohammad Imran Totah | East Jerusalem | transferred in June 2014

Coercive environment created by:

Punitive residency revocation

Mr. Totah's family was originally from West Jerusalem, but they were forced to leave in 1948 because of the Nakba. From East Jerusalem, Mr. Mohammad Imran Totah is married and has five children: two girls and three boys. Mr. Totah is currently a lecturer at Al-Quds University in the Business Administration Department.

In 2006, Mr. Totah was elected to the Palestinian Legislative Council (PLC) as a member representing the Jerusalem District. On May 2006, the Israeli Ministry of the Interior sent Mr. Totah, along with two other members of the PLC, a decision revoking their Jerusalem residency rights unless they would resign from the Palestinian Legislative Council. The three members rejected the decision of the Ministry because they had been elected through a transparent democratic election carried out in accordance with the Oslo agreement, to which Israel was a party.

In 2007, Israeli forces arrested Mr. Totah, and he was sentenced to three and one-half years in prison. In 2010, he was released and ordered to leave Jerusalem within 50 days. His colleagues, Mr. Atton and Mr. Abu Arrafeh, were treated the same. All three rejected the order and sought refuge at the premises of the International Committee of the Red Cross (ICRC).

"I have two sons and two daughters," said Mr. Totah in a 2010 interview from the ICRC headquarters. "My children are aged from six to thirteen years old, and it is not easy for them to understand what's going on. My youngest child is six years old. Every time he comes to visit me with his brothers and sisters, he takes my hand and says, 'When you were in prison, the door was closed, so you couldn't leave. Here the door is open, but you don't come with us. I see other people leaving; why don't you want to come with us?' Of course, I cannot leave the premises because I will be arrested. My son doesn't understand, and says 'Daddy you hate us. You don't want to live with us,' and then goes to his mother crying. It is impossible to explain to a child because they cannot understand."

During this period, a team of lawyers challenged the residency revocation and deportation orders against Mr. Totah at both the Israeli Reconciliation and Central Courts. Several hearings were conducted, and judges consistently ruled against Mr. Totah.

On 23 January 2012, Israeli Special Forces stormed the premises of the ICRC headquarters and abducted Mr. Totah. He was sentenced to two years imprisonment.

In June 2014, Mr. Totah was released and forcibly moved to the city of Ramallah, in the West Bank. Since then, Mr. Totah has been living in Ramallah.

During these years, Mr. Totah's wife and five children were separated from him and denied the right to live with their father. This caused psychosocial problems for the family as a whole and the children in particular.

Since June 2014, Mr. Totah has been effectively imprisoned in Ramallah. He cannot leave the city because his only identification, the Israeli Jerusalem Identity Card, was taken from him. He cannot, therefore, travel anywhere outside of Ramallah.

His family has struggled with the difficult living situation. They moved to Ramallah to stay part-time with Mr. Totah in a rented house. However, his children must cross a military checkpoint every day to get to school in Jerusalem, or when they need to access medical services in Jerusalem. Moreover, they have to continually prove that their 'center of life' is in Jerusalem, or they themselves will lose their residency rights.

Mr. Totah's forcible removal has led to the fragmentation and destabilizing of his family, but he perseveres. Mr. Totah states emphatically, "We will never stop dreaming of returning to Jerusalem. We believe that Jerusalem is an occupied city, and Israel should abide by the international law that is applicable to the occupied city. The problem I face is a problem faced by all Palestinians."

Case Study #9: Khawla as-Sous | East Jerusalem | husband transferred in late 2015

Coercive environment created by:

Punitive residency revocation

I am a lecturer at al-Quds University. I was born in 1960. I am from Jerusalem, and I have a Jerusalem ID. My father is originally from Dura, Hebron, but we have always lived in Jerusalem.

I have been married since 1991 and I have six children, four daughters and two sons. Our youngest son, who is 15 years old, was arrested ten months ago by Israel at the al-Aqsa Mosque compound, towards the end of 2015.

Since we got married in 1991, my husband, who holds a West Bank ID, has been applying for family unification so as to be able to live with me in East Jerusalem. In the first years of our marriage his requests were denied, but since 2004, he has been getting one-year permit for residency every year. Since 2004 until now, they have been renewing his permit every year. However, after my son was arrested, Israel revoked my husband's residency and transferred him to the West Bank. They said that the revocation of the residency was because of the case of my son, and also for security reasons. My husband remained there for 50 days until our lawyer was able to get him a document which allowed him to return to Jerusalem until the Israeli Ministry of Interior makes a decision on his residency status. Our lawyer has argued in court that they cannot take away his residency, because the son's issue has nothing to do with the father's, but the Ministry still refuse to give him residency; we received the initial denial when he was still in the West Bank, and we received another one in July 2016. If the Ministry keeps rejecting his applications, we will file a case in the Israeli Supreme Court.

We consider ourselves a family of the resistance, because we have been suffering since the moment my husband and I got married. I hold a Jerusalem ID and my husband holds a West Bank ID. Even before the revocation of my husband's permit, we have never lived a stable life; we have always been living under threat, because we knew my husband could be subjected to residency revocation at any moment. He has never enjoyed freedom of movement or work. We have had to live through so much pain and stress every year when we have tried to extend the residency permit of my husband. During this procedure, the Israelis always require so many documents. One time I had to bring with me 36 documents in order to prove that my sons and I were living in Jerusalem so that they would issue my husband the residency permit. Furthermore, whenever any resistance action against Israel occurs, Israel closes the West Bank which means they also stop issuing the permits. We are living in an ongoing state of threat and stress. In addition, the imprisonment of my son is making the situation much harder; he is still in Megiddo prison.

[We found out my husband's residency had been revoked] by a pure coincidence. My husband was stopped at a checkpoint, and the police officer asked my husband to give him his documents, so he gave him his ID and his permit for residency. When the police officer checked his name on the computer, he informed my husband the permit was revoked the day our son was arrested, nearly five months earlier. At that time, the Ministry of Interior informed the police about the revocation but did not inform us or our attorney. My husband lived and moved in and out of Jerusalem for five months having no idea that his permit was revoked. First, the police officer detained my husband for eight hours in the Atarot police station, and then they brought a car and he was driven, along with an Israeli soldier, towards Qalandia to the West Bank, to transfer him to Dura. He remained there for 50 days until our attorney filed a complaint against the Ministry of the Interior. The judge decided that my husband should be permitted to live with us, but still the Israeli Ministry of the Interior has not yet issued a final decision about my husband's residency status. Therefore, they might deny his residency at any moment. We're still at risk, because the temporary permit my husband holds at the moment is not permanent or final, as he must regularly apply to Israeli authorities to renew it.

The Ministry has not informed us whether they might reinstate my husband's permanent residency at some point in the future, but most probably they will not. If they consider my son's (alleged) guilt as different from his father's case, then my husband will get residency. However, as long as they apply collective punishment on Palestinians, then my husband's situation will remain tough. For example, if one Palestinian does something wrong, all of his relatives will be affected and get punished as well.

The Israelis did not hurt me directly; they hurt me through my husband. We need my husband at the current time in order to be able to afford to pay the expenses associated with our son's arrest, as well as paying our other costs; we have four children studying at universities, for example. I will consider selling some of my properties such as the home I inherited from my parents in order to be able to face the current crisis. My elder son decided to postpone studying at university in order to work and help the family.

Our financial state is very bad, although I have a job. My husband used to work in Jerusalem, but, when he was removed to the West Bank, he remained there 50 days and lost his job as an electrician. Although he's in Jerusalem now, he cannot start a workshop because his residency status is still uncertain. He also fears taking a bus [public transportation] from Jabal al-Mukaber (where we live] or walk around freely, because there's a checkpoint close to our home. He always prefers going with us in our private car. He worries about being stopped at a checkpoint and prevented from going in and out again.

I can't describe as a mother how much it hurt me to see my child imprisoned. He should have spent the year in school, but instead he has spent it in prison. The grief and pain that I feel are indescribable.

We will never consider moving to the West Bank. I know our situation here is very tough, but we will never reside somewhere else. I'm 100 percent sure that all of these procedures that the Palestinians of Jerusalem face are intended to transfer us from Jerusalem. They don't want any of us in Jerusalem, but we will keep resisting and will do the impossible to stay in our homes.

The forced displacement of protected persons by expulsion or other forms of coercion

132. The selected case studies concern persons that may be considered as 'protected' under international law on account of their status as members of an occupied civilian population.

133. The selected case studies suggest that the respective instances of displacement contained therein may be considered as 'forced' in nature. The underpinning factor for the individuals' departure from their homes and communities was stated as the punitive revocation of their or their spouse's permanent residency status in Jerusalem, and the concomitant withdrawal of documentation which permitted these persons to move between East Jerusalem and the rest of the West Bank. Accordingly, such acts and their direct consequences appear to constitute acts of 'expulsion'.

134. Given the absence in the jurisprudence and commentary surrounding forcible transfer of any stipulation as to a minimum period of displacement, and though continued rejections of permanent residency applications suggests this expulsion to be long-term in nature, the (temporary) permission issued to the affected person in case study #9 to return to East Jerusalem does not in any way preclude consideration of the initial 50-day period of expulsion as an act of forcible transfer, or the impact of the uncertainty of his status on the affected person and his family life.

135. It is relevant to note that, in both cases, the affected persons moved to other locations inside the West Bank, with no recognized international border crossed in the process.

136. The forced displacement outlined in the above case studies is attributable to Israel on the basis that the revocation process being performed by State actors/ organs in accordance with official Israeli policy and legislation. As noted, punitive residency revocations are issued at the discretion of the Israeli Minister of the Interior, and enforced through State apparatus.

137. Further, though the increasingly challenging nature of the living environment for Palestinians inside East Jerusalem was not emphasized in the above cited case studies as a factor underpinning their transfer, it should be noted that Israeli practices including restrictions on child registration; unlawful land acquisition and a chronic lack of access to basic services for residents of Palestinian neighborhoods in East Jerusalem would appear to constitute the creation of a 'coercive environment' for the purpose of establishing forced displacement under Article 49 of the Fourth Geneva Convention.

From areas in which the affected persons were lawfully present

138. To BADIL's knowledge, that the individuals interviewed for the above case studies were lawfully present (understood as per the ruling in *Popović et al*) in their respective areas is uncontested.

The removal taking place without grounds permitted by international law

139. There exists no reasonable basis to suggest that Israel's forced displacement of those individuals highlighted in the above case studies was conducted under grounds permitted by Article 49(2) of the Fourth Geneva Convention. Nor has Israel made any argument to this effect.

140. Such displacement is clearly not undertaken for the 'security of the population', understood as a scenario whereby an area is in danger as a result of military operations or is liable to be subject to intense bombing. No such military operations or risk of bombing are present, thus also precluding any suggestion of the displacement being permitted on the grounds of 'military imperative'. Nor is there any indication that the displacement in question was conducted – or intended to be conducted - for 'humanitarian reasons'. To the contrary, Israel has made it clear that these revocations of permanent residency status have been conducted as a punitive measure, in response to the actions of the individuals or alleged actions of their family members.

141. In addition, 'evacuation' as per Article 49 of the Fourth Geneva Convention refers to a *temporary* period of displacement[180] and, therefore, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption. Although in case study #9 the affected person has, at the time of writing, been permitted by Israeli courts to temporarily stay with his family in Jerusalem, the preceding 50-day period of expulsion - openly conducted by Israel as a punitive measure - cannot be considered as an 'evacuation' for the purpose of Article 49.

142. There is no indication that Israel is looking to facilitate the return of those individuals featured in the case studies, while the absence of concerted military hostilities would also appear to render Article 49(2) inapplicable to the cases in point. Further, there exists a clear failing on behalf of the Israeli occupying forces to ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated, as is required under Article 49(3) of the Fourth Geneva Convention as part of any lawful evacuation.

Demonstrable plan/purpose

143. That the transfer of Palestinians from East Jerusalem by way of revocation

[180] *Blagojević & Jokić*. Para. 600

of their permanent residency status - including those persons outlined in the above case studies – is conducted in the context of an Israeli plan or purpose to affect such transfers cannot be reasonably contested. More than 14,500 Palestinians have been forcibly removed in this way since 1967, while Israel has formally stated its desire to achieve a demographic ratio within Jerusalem of 30 percent Palestinians or non-Jewish Israeli residents to 70 percent Jewish Israeli residents.[181]

[181] Israel. Jerusalem Municipality. *Local Outline Plan No. 4: Jerusalem 2000 Master Plan*. Compiled by Eitan Meir et al. Jerusalem, 2004

8 *Chapter Eight*

Forcible Transfer During Operation 'Protective Edge'

Chapter 8 [182]

Forcible Transfer During Operation 'Protective Edge'

144. On 7 July 2014, Israel launched Operation "Protective Edge" inside the Gaza Strip, with the stated aim of preventing rocket attacks and other military operations by Hamas against Israel. Protective Edge was initially conducted by way of air strikes, before shifting to a large scale ground invasion. The operation officially concluded on 26 August 2014 with an unconditional ceasefire, yet the human cost of this 51-day military assault was incalculable, with the physical landscape of the Gaza Strip reduced to ruins and no resident left untouched.

145. During the offensive, 14,500 tank shells and approximately 35,000 artillery shells were fired by Israel,[183] with predictable results. In excess of 2,250 Palestinians have so far been recorded as having been killed by Israeli military action, including 551 children and 299 women.[184] During this same period, more than 11,000 Palestinians were physically injured (including

[182] This chapter draws heavily upon the content of BADIL's February 2016 submission to the International Criminal Court, a public version of which can be found at http://www.badil.org/en/publication/press-releases/77-2016/4557-pr-en-210316-13.html

[183] *Bayabasha.* 10.2014. *16 Facts about Operation Cast Lead*, Ground Forces Magazine, No. 29. 47. Available at: http://mazi.idf.il/6216-he/IGF.aspx (in Hebrew). Cited in *Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1*, A/HRC/29/CRP.4 (hereafter '*Report of the Commission of Inquiry*'). Para. 408

[184] *Report of the Commission of Inquiry.* Para. 574

3,374 children, 2,088 women and 410 elderly),[185] whilst the infliction of acute mental trauma was widespread among this occupied civilian population.

146. In total, Israeli forces destroyed or damaged some 169,075 Palestinian housing units, leaving about 100,000 people homeless.[186] Israeli airstrikes targeted the territory's sole power plant, ceasing its operation. 17 out of 32 hospitals were damaged during the conflict, with six closed down as a result. Out of 97 primary health centers monitored for damage and closures by UN bodies, four were completely destroyed, while 45 sustained damage.[187] In addition, 26 schools were completely destroyed, while 122 sustained damage.[188] Palestinian agricultural infrastructure suffered damage to the tune of $550m,[189] and at least 419 other businesses and workshops were damaged.[190]

147. This staggering level of death, injury and destruction naturally produced mass forced displacement of Palestinian civilians on a vast scale, and at the height of the Israeli military attack roughly half a million Palestinians were internally displaced inside the Gaza Strip, accounting for 28 percent of the enclave's total population. This figure included 293,000 people taking shelter in UNRWA schools, 49,000 in government schools, and 170,000 with host families and "in informal shelters such as empty buildings, churches or mosques".[191] This mass displacement was evident across the full expanse of the territory, ranging from the Beit Lahiya/Beit Hanoun district (141,371 IDPs[192]), to Gaza City (190,017), to Deir al-Balah (18,085), Khan Yunis (78,402) and Rafah (61,511).[193]

148. To this end, the Gaza Strip was and - to a large extent - remains an environment characterized by a lack of fundamental human rights, including those of personal safety, basic health, shelter and sustenance. As such, Israel, through practices and policies which directly contravene established principles of international law, stripped genuine choice from the decision of hundreds of thousands of Palestinians to flee their homes. Residents faced an ultimatum

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[185] OCHA oPt. 27.08.2014. *Gaza Initial Rapid Assessment* (hereafter *'OCHA. Gaza Initial Rapid Assessment'*). 2 Available at: https://www.ochaopt.org/documents/gaza_mira_report_9september.pdf

[186] OCHA oPt. 07.2015. *The Gaza Strip: Internal Displacement in the Context of the 2014 Hostilities* (hereafter *'OCHA. Internal Displacement in the Context of the 2014 Hostilities'*). Available at: http://www.ochaopt.org/documents/ocha_opt_gaza_idps_factsheet_july_2015_english.pdf

[187] *OCHA. Gaza Initial Rapid Assessment*. 14

[188] Ibid. 15

[189] UNCTAD. 01.09.15. *Occupied Palestinian Territory slides into recession, Gaza becoming uninhabitable*. 9 Available at: http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1068.

[190] *OCHA. Gaza Initial Rapid Assessment*. 17

[191] *OCHA. Gaza Initial Rapid Assessment*. 3

[192] Figures accurate as of 26.08.2014

[193] *OCHA. Internal Displacement in the Context of the 2014 Hostilities*

of flight or the likelihood of death, serious injury or other forms of acute suffering to themselves or to their family members. The resulting forced displacement was of an almost unimaginable scale, and can – and must – be distinguished from forced displacement which naturally occurs in instances of armed conflict fought within the confines of International Humanitarian Law.

149. This distinction is further demonstrated by the fact that, during Protective Edge, Israel failed to establish protected humanitarian areas within the Gaza Strip in which displaced persons could seek refuge. Indeed, given the limited physical dimensions of the Gaza Strip and sheer scale of its territory targeted by Israeli fire, there existed no safe place to which to flee. Beyond this, Israel actively targeted Palestinians during and after the process of flight, and the very buildings designated by humanitarian organizations as shelters for the displaced – home to some 300,000 displaced Palestinians at the peak of hostilities – were subject to Israeli attack. These included seven separate shellings of United Nations-run schools which left 44 Palestinians dead and over 200 wounded.[194]

150. As such, during Protective Edge Israel not only repeatedly engaged in unlawful acts knowing that these acts would force Palestinians from their homes and communities, but also with knowledge that the displaced would likely face the threat of death, serious injury and additional psychological trauma in those areas to which they fled.

151. In the aftermath of the military assault, the Gaza Reconstruction Mechanism ("GRM") was established with the intention of enabling the import of construction materials which would otherwise have been prevented by Israel's ongoing closure of the Gaza Strip. The GRM is coordinated by the United Nations, with Palestinian Authority and Israeli support to bring in "ABC" construction materials (aggregates, steel reinforcement bars and cement). While the GRM facilitated some importation of construction materials, in the aftermath of Protective Edge it failed to allow for importation of the volume of materials required for genuine reconstruction.

152. For instance, in the period between September and November 2014, only a very limited quantity of materials was permitted to enter, and no materials entered the Gaza Strip in December 2014.[195] OCHA recorded just 287 trucks of construction materials entering the Gaza Strip during the entire month of

[194] Peter Beaumont. The Guardian. 27.04.2015. *Israel respopnsible for Gaza strikes on UN schools and shelters, inquiry finds*. Available at: https://www.theguardian.com/world/2015/apr/27/israel-responsible-gaza-strikes-un-schools-ban-ki-moon

[195] Gisha. 2015. *Entrance of construction materials via Kerem Shalom Crossing*. Available at: http://gisha.org/graph/2395

November,[196] whereas a minimum of 735 truckloads of construction materials per day was needed to complete reconstruction within three years.[197] As of 8 June 2015 - almost one year after the start of the hostilities - not a single totally-destroyed home had been rebuilt in Gaza.[198]

153. Through such restrictions, Israel has actively prolonged and deepened the suffering and vulnerability of displaced Palestinians within the Gaza Strip. Such a scenario is entirely untenable, and OCHA has warned that the living conditions of the displaced - whether they have found temporary accommodation in rented apartments, tents, with host families or in the rubble of their homes - raise grave protection issues. These include not just those health hazards directly resulting from inadequate provision of shelter, but also issues concerning gender-based violence and tensions with host communities.[199]

154. The result is that for many Palestinians unlawfully forced from their homes during Israeli military operations, their displacement endures. As of December 2016, some 75,000 Palestinians remained displaced inside the Gaza Strip due to Israel's actions in the course of Protective Edge.[200] Moreover, Israel's active suppression of reconstruction efforts inside the Gaza Strip serves to further contribute to a deeply oppressive living environment, which in turn produces further forced displacement.

[196] OCHA oPt. 11.2015. *Humanitarian Bulletin: Monthly Report*. Available at: https://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_12_24_english.pdf

[197] Norwegian Refugee Council. 04.12.2014. *Palestinians dread winter in temporary housing*. Available at: https://www.nrc.no/news/2014/december/palestinians-dread-winter-in-temporary-housing/

[198] UNRWA. 11.06.2015. *Gaza Situation Report 96*. Available at: http://www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-96

[199] *OCHA. Internal Displacement in the Context of the 2014 Hostilities*

[200] Council of Europe's Parliamentary Assembly. 07.12.2016. *The humanitarian crisis in Gaza.* Available at: https://unispal.un.org/DPA/DPR/unispal.nsf/53936ddf3dd093a1852575530073f2e6/c92e04de9e71ee40852580830054f650?OpenDocument

Case Study #10: Kamal al-Lowh | Deir al-Balah | transferred in August 2014

Coercive environment created by:

Indiscriminate/disproportionate warfare practices

When the land invasion started, we were forced to leave from the bombs which [the Israelis] dropped on my house. My house contains four apartments, and six people lived there. My house was targeted by explosions and bulldozers while we were in the house, then the surrounding areas were targeted and we left to a rented house in Al-Zawaydah area. However, two days later that area was also targeted, and we were forced to go to the schools. We left as large groups; it was mass displacement.

On 13 August 2014, the Israeli forces invaded Gaza by land. The tanks started invading the area and bombing arbitrarily; they targeted anyone who showed their heads by bombing the buildings. We moved to the Salah Aldeen area walking on foot, even though it is 1.7 km away, and we had my 90-year-old mother with us. She was unable to walk, so we had to carry her. When we arrived in Al-Zawaidah we rented a house for three days, but the bombardment reached us there, and we had to stay in a school for another 3 days. The school was then targeted by the Israeli forces, and I was injured. There was no safe place from the bombardment and the destruction; the area surrounding the school was targeted as well, and food was not available.

We returned to the house during the second ceasefire, and found that the area was totally destroyed. Here is my house and the house of my son, and a field; everything has been destroyed, including the trees. Even my dog was injured. I am trying to rehabilitate the dog until this day. I have heard that there were martyrs, but I did not see, as we had left the area. There were no warnings. I left my house because I was scared of being killed by the explosions and the missiles. During the 1967 war, we left animals on the farm for three days, and we did not see this level of destruction. During the war on Gaza in 2008, we left our houses but it was not for long, and we came back sooner to our areas. During this war, they targeted everything. I was initially separated from my family which made the situation much more difficult. At the moment, I am staying in an UNRWA house with my family.

The Israeli forces buried the rubble in the ground to hide the evidence of the destruction. This area was full of trees. They destroyed the garage, the trees and the buildings. The first floor of the house was leveled to the ground. Our bulldozers and our truck have been destroyed as well. Water motors as well as 15 year-old trees were totally destroyed. This is what the Palestinian people face: a terrifying war against humans.

Case Study #11: Ahmad Khalid Shaheen | Jabalia | transferred in July 2014

Coercive environment created by:

Indiscriminate/disproportionate warfare practices

On 30 July 2015, at 4:30 in the morning, the bombardment was close to the house. I heard a huge explosion and realized we had been bombed; the smoke filled the house so I could not see. I started calming the kids down, and made them leave the house. We ran toward the stairs; I held a small child who took refuge at our house with his mother, and started running into the street to get away from the house. I started looking around to make sure all my kids were behind me. I noticed that my son Ali was not behind me. I returned to the house and found Ali lying down on the mattress with a light cover over him. I called his name but he did not reply, I reached for his heart to check his heartbeat, but my hand touched his heart and his warm blood. I removed my hand, it was covered in blood. I was screaming hysterically, my brothers came to carry him with me, I called for the ambulance but they could not come because they had been bombarded the previous night. I immediately took my car out to send Ali to the hospital, my family tried to stop me but as a father I could not leave my son. I reached the hospital, blood was everywhere. I could not find a bed for my son or even a place on the ground. I put him between two other martyrs.

After my house was bombarded, the residents of the area left the houses in a mass displacement and ran away terrified of the missiles. I used to come back to the house during the ceasefire for short times - as a doctor I had to go back to work. I did not receive any warning on my mobile phone or land line, and my phone is always available, because as a doctor, I am on standby all the time, to be contacted by the hospital. And we did not receive any leaflets either.

I decided to return to the house a month after the end of the war, because at that time my wife needed surgery on her head, and I did not want to lose another person from my family. I tried to fix what could be fixed from the house to return and resettle in it. After the bombardment of the house and my son's martyrdom, our life has been full of fear and darkness and countless tears. My family returned to the house a month after the end of the war, I tried to hide the result of the missile that hit the house so my children would not see it, but it was difficult.

The forced displacement of protected persons by expulsion or other forms of coercion

155. The selected case studies concern persons that may be considered as 'protected' under international law on account of their status as members of an occupied civilian population.

156. The selected case studies suggest that the respective instances of displacement contained therein may be considered as 'forced' in nature. The underpinning factors for the individuals' 'decision' to leave - or to remove family members from - the areas in question were stated as a fear of death or serious injury as a result of Israel's targeting of civilian areas and objects with heavy weaponry.

157. Such allegations are corroborated by the findings of expert, independent reports. For instance, Amnesty International identified eight specific cases of Israeli attacks on Palestinian homes where Israel "knew or should have known [that there were] civilians inside".[201] In these cases, at least 111 individuals - including at least 104 civilians - lost their lives, with many others injured.[202] The Independent Commission of Inquiry on Gaza 2014 concluded that the nature of Israeli attacks "raise concerns that Israel's interpretation of what constitutes a 'military objective' may be broader than the definition provided for by international humanitarian law,"[203] and this notion finds further support in testimony provided by members of Israel's armed forces who served in Protective Edge.[204]

158. The Independent Commission of Inquiry also noted that, in the course of Protective Edge, Israeli attacks were often conducted by way of imprecise or disproportionate weaponry, including the "frequent use of large bombs that were apparently meant to cause extensive damage"[205] and use of heavy artillery against civilian areas, including the densely-populated Jabalia Refugee Camp on 30 July 2014. Such munitions allow for no distinction to be made between civilians and combatants, nor between civilian and military objects. As such, "[h]eavy artillery shelling into a populated area would be inherently

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[201] Amnesty International. 05.11.14. *Families under the Rubble: Israeli Attacks on Inhabited Homes* (Hereafter '*Amnesty International. Families Under the Rubble*'). 8. Available at: http://www.amnesty.org/en/library/asset/MDE15/032/2014/en/613926df-68c4-47bb-b587-00975f014e4b/mde150322014en.pdf

[202] Ibid. 8

[203] *Report of the Commission of Inquiry 2014*. Para. 223

[204] For examples of such testimony, see *No Safe Place*. 25-30

[205] Human Rights Council. 15.06.15. Advanced Edited Version of *Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1*, A/HRC/29/52 (hereafter '*Advanced Version of Report of the Commission of Inquiry 2014*'). Para. 40

indiscriminate."[206] Such tactics were also used in Israel's attack on the *Bastat Market* - during a 4-hour ceasefire - on 30 July 2014, which killed 30 Palestinian civilians.[207] To this end, in *Simić et al*, the ICTY held that the shelling of civilian objects constituted an intimidating act which, in turn, served to effectively deprive the civilian population of free will in their 'decision' to leave a given area,[208] while the "use of heavy weapons with no specific target in order to disperse the population" has been noted by the pre-Trial Chamber of the ICC.[209]

159. As such, during Operation Protective Edge, in its active targeting of Palestinian residential dwellings and, more widely, its failure to comply with principles central to International Humanitarian Law - namely, its failure to distinguish between civilians and combatants on account of employment of imprecise and/or disproportionate warfare methods - Israel created an environment characterized by such an elevated risk of physical danger and mental trauma that members of the civilian population had no option but to flee.

160. In addition to residential dwellings, other civilian buildings and structures were also targeted by Israeli weaponry throughout the Gaza Strip, further contributing to a highly coercive environment. As of 4 September 2014, 450,000 Palestinians inside the Gaza Strip remained unable to access municipal water supplies due to infrastructure damage[210] which affected water wells and networks, tanks, desalination units, wastewater networks and pump stations. Thus, on account of Israeli military actions and wider policies, Palestinians inside the Gaza Strip were deprived of the fundamental right to access potable water; an essential requirement for the existence and maintenance of any civilian population. [211] Similarly, the territory's sole power plant ceased operation following an Israeli airstrike on 29 July 2014. According to OCHA, "[n]ecessary repairs and maintenance could not take place due to hostilities and, in several instances, the direct targeting of personnel: at least 14 electricity, water and waste water

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[206] Bill Van Esveld quoted in Hubbard & Rudoren. The New York Times. 03.08.2014. *Questions of Weapons and Warnings in Past Barrage on a Gaza Shelter.* Available at: http://www.nytimes.com/2014/08/04/world/middleeast/international-scrutiny-after-israeli-barrage-strike-in-jabaliya-where-united-nations-school-shelters-palestinians-in-gaza.html

[207] Al-Haq. 09.08.14. *Briefing Note IV: Unlawful Targeting of Journalists and Media Buildings*. Available at: http://www.alhaq.org/advocacy/topics/gaza/841-briefing-note-iv-unlawful-targeting-of-journalists-and-media-buildings

[208] *Simić et al*. Para. 126

[209] The Prosecutor V. Bosco Ntaganda. Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda. Pre-Trial Chamber II. 09.06.2014. Para. 66

[210] OCHA oPt. 04.09.14. *Gaza Emergency. Situation Report*. 1. Available at: http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf

[211] For further information on the impact of Israeli practices on the access of Gaza Strip residents to water, see Marlowe, J. 18.04.15. *Parting the brown sea: Sewage crisis threatens Gaza's access to water*. Available at: http://america.aljazeera.com/articles/2015/4/18/sewage-crisis-threatens-gazas-access-to-water.html

technicians employed by local utilities were killed by Israeli attacks and at least ten others were injured."[212]

161. It is recalled that, in *Krajišnik*, the ICTY concluded that measures such as "[…] the cutting off of water, electricity, and telephone services" all contributed to the intentional creation of an environment in which it was "practically impossible [for the civilian population] to remain," resulting in forcible transfer.[213] It may be therefore concluded that displacement resulting from Israel's unlawful targeting of civilian infrastructure in the course of Protective Edge was of a forcible nature.

162. The forced displacement outlined in the above case studies is attributable to Israel on the basis that the material acts through which such displacement took place during and following Protective Edge constituted methods or tactics of war adopted by the Israel government.

From areas in which the affected persons were lawfully present

163. To BADIL's knowledge, that the individuals interviewed for the above case studies were lawfully present (understood as per the ruling in *Popović et al*) in their respective areas is uncontested.

The removal taking place without grounds permitted by international law

164. There exists no reasonable basis to suggest that Israel's forced displacement of Palestinian civilians within the Gaza Strip was conducted under grounds permitted by Article 49(2) of the Fourth Geneva Convention.

165. Such displacement is clearly not undertaken for the 'security of the population', understood as a scenario whereby an area is in danger as a result of military operations or is liable to be subject to intense bombing. Though it cannot be disputed that many of the areas from which Palestinians were displaced during Protective Edge can be said to have fallen within such a classification, in the provided case studies the displacement in question was in fact achieved through application of the very factors that the 'evacuation' is intended to protect against: military operations and intense bombing. It stands to reason that displacement cannot be said to have been for the purpose of ensuring the security of a given population if that displacement was effected by means which directly and severely attack that security.

166. Nor can the displacement in question be said to have been required for humanitarian reasons, with such displacement required, by definition, to have been undertaken in protection of the welfare of those to be displaced. In its

[212] OCHA. 01.09.2014. Gaza Emergency Humanitarian Snapshot (as of 29 August 2014, 08:00 hrs). Available at: http://reliefweb.int/report/occupied-palestinian-territory/occupied-palestinian-territory-gaza-emergency-humanitarian-14

[213] *Krajisnik*. Para. 729

conducting of kinetic military operations throughout the Gaza Strip, and its failure to designate effective 'safe zones', Palestinians were forced to flee to areas which were also at risk of attack. In addition, through its extensive targeting and destruction of Palestinian homes, agricultural land and other infrastructure essential to the maintenance of human existence inside the Gaza Strip during the course of Protective Edge, including power stations and medical facilities, Israel directly contributed to an unmitigated humanitarian catastrophe across the enclave generally.

167. Nor can the cited case studies be said to reflect displacement conducted as part of an evacuation required for imperative military reasons. Though the circumstances which may constitute 'imperative' in such contexts are debated, it is established that the logic of military necessity may only apply when "the principles of distinction, proportionality, and precautions are observed."[214] As has been outlined, such principles were clearly and systematically disregarded by Israel in its execution of Protective Edge.

168. In addition, 'evacuation' as per Article 49 of the Fourth Geneva Convention refers to a *temporary* period of displacement[215] and, therefore, displacement which is not intended or likely to be temporary in nature cannot be considered as falling within this exemption.

169. There is no indication that Israel is looking to facilitate the return of Palestinians displaced from their homes and communities in the Gaza Strip as a result of Protective Edge. To the contrary, as of December 2016, an estimated 75,000 individuals remained internally displaced[216], while Israel continues to implement and maintain policies which render such return virtually impossible. Further, there exists a clear failing on behalf of the Israeli occupying forces to ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated, as is required under Article 49(3) of the Fourth Geneva Convention as part of any lawful evacuation.

Demonstrable plan/purpose

170. That the transfer of Palestinians inside the Gaza Strip during Protective Edge - including those persons outlined in the selected case studies - was conducted in the context of an Israeli plan or purpose to affect such transfers may be

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[214] Ofilio Mayorga. 08.2013. Policy Brief. *Arbitrating War: Military Necessity as a Defense to the Breach of Investment Treaty Obligations*. Harvard University. Program on Humanitarian Policy and Conflict Research. 4. Available at: http://www.hpcrresearch.org/sites/default/files/publications/081213%20ARBITRATING%20WAR%20%28final%29.pdf

[215] *Blagojević*. Para. 600

[216] Council of Europe's Parliamentary Assembly. 07.12.2016. *The humanitarian crisis in Gaza. op. cit.*

comfortably inferred from both Israel's past and contemporary actions, and the plainly evident results of such actions. For instance, large-scale forced displacement may be considered a natural consequence of the aforementioned coercive environment resulting from - *inter alia* - the targeting of civilians, the use of imprecise and disproportionate weaponry and tactics, and the destruction of homes and other civilian objects on a vast scale.

171. That Israeli officials could be expected to foresee such consequences is further bolstered by a consideration of previous, recent Israeli military assaults on the Gaza Strip. Specifically, Israel would have been acutely aware of the mass forced displacement caused by similar/identical warfare practices deployed during both Operation 'Cast Lead' (2008-2009) and Operation 'Pillar of Defense' (2012).

172. Significantly, and as noted in the report of the Independent Commission of Inquiry, as the events of Protective Edge unfolded and the mass forced displacement of Palestinians inside the Gaza Strip became abundantly clear, Israel made no efforts to cease or adapt those practices which produced this displacement.[217] That Israel was in possession of the knowledge of these unlawful consequences cannot be reasonably disputed given its own highly-advanced intelligence capabilities and the extensive international media coverage of the mass displacement resulting from its warfare practices. Indeed, on 31 July 2014 (a date roughly equidistant between Protective Edge's points of official commencement and conclusion), the UNRWA Commissioner-General, Pierre Krähenbühl, briefed the United Nations Security Council, specifically alerting the international community to the vast scope of forced displacement inside the Gaza Strip and of the humanitarian catastrophe that this scenario presented.[218] Despite this awareness, however, Israel maintained such policies.

[217] *Advanced Version of Report of the Commission of Inquiry 2014.* Paras. 43, 44, 51

[218] Briefing delivered to United Nations Security Council by Pierre Krähenbühl. 7232nd Meeting. 31.07.14. Full text available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7232.pdf

Chapter Nine

Conclusion and Recommendations

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Conclusion and Recommendations

173. This paper does not claim to be a comprehensive account of Israeli-perpetrated forcible transfer inside the oPt, but is instead intended to highlight that such offences *are* taking place, and to assist in developing collective understanding as to the means through which such contemporary, unlawful displacement is pursued. To this end, the present report sets out a thorough, consensus-driven legal framework which outlines the requisite elements of forcible transfer as provided in international law, and then utilizes this framework in assessment of the legality of given instances of Palestinian displacement. The result is a report which establishes a strong *prima facie* case that Israel is responsible for the forcible transfer of Palestinians throughout the length and breadth of the oPt, and that such transfers are effected by a wide range of Israeli acts and policies.

174. Some of these acts and policies - including the Israeli-implemented discriminatory zoning and planning regime, long-standing access restrictions to basic services and grazing land, and systematic intimidation by Israeli colonizers - have already been acknowledged by UN bodies, including the Secretary-General, as contributing to a coercive environment inside the oPt, thus "[raising] concerns about forcible transfer in violation of international law".[219] Such findings, however, fall short in asserting the existence of a causal link between acts attributable to Israel and forced displacement of a nature that meets the legal definition of forcible transfer.

175. The content of this report bridges this analytical gap, providing 11 separate case studies which appear to satisfy this legal standard. The question now to

[219] UN Secretary-General. 20.01.2016. A/HRC/31/43. *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan.* Para. 54

be considered by human rights organizations, UN bodies, third party states and other relevant actors is not whether Israeli-perpetrated forcible transfer is present within the oPt, but rather what is the true *scale* of this offence. This, too, is a question for which the present report can assist in answering, with its findings shedding light on Israeli practices that result in the forcible transfer of Palestinians but which have not received meaningful attention. For instance, the mass forced displacement resulting from unlawful warfare practices employed by Israel during Protective Edge and other military assaults directed against the Gaza Strip would appear to satisfy the requirement that the persons concerned were deprived of genuine choice in their 'decision' to leave their homes and communities. Despite this, there has been little appreciable effort by relevant actors to consider the legal implications of Israel's forced displacement of Palestinians inside the Gaza Strip.

176. The same is equally true of measures such as punitive or administrative home demolitions, punitive residency revocations and the creation and maintenance of an oppressive living environment inside so-called 'seam zones'. In light of jurisprudence borrowed from the realm of International Criminal Law, instances of displacement resulting from such measures would appear to constitute expulsions or forced displacement achieved through other forms of coercion, and are thus to be considered as material acts capable of underpinning a finding of forcible transfer.

177. More widely, these Israeli measures and the associated displacement also highlight an elevated, or at the very least, broader, risk of forcible transfer during instances of prolonged military occupation, with such scenarios affording the Israeli occupying forces extensive opportunities for strategic manipulation of the operating legal environment. Doing so enables the Israeli government – through the Civil Administration - to execute administratively-rooted measures which result in the unlawful displacement of the occupied civilian population. Accordingly, the more involved a foreign occupation becomes in the administrative workings of an occupied territory, the greater the opportunity for such manipulation.

178. This report is therefore intended to serve as an aid in diagnosing instances of forcible transfer both inside the occupied Palestinian territory and in other geographic contexts, as well as assisting relevant actors in identifying and addressing scenarios which may give rise to this offence.

179. Forcible transfer not only constitutes a grave breach of the Fourth Geneva Convention, confirming its status as one of the most heinous acts that can be committed within the context of international armed conflict, but it is also an act which commonly targets individuals and groups on the basis of their identity and thus serves to reflect and underpin broader, systematic forms of discrimination. To this end, in the realm of International Criminal Law, the International Criminal Tribunal for the Former Yugoslavia has

rarely considered instances of forcible transfer without also simultaneously considering the crime against humanity of persecution.

180. Given the gravity of the act of forcible transfer, the extent of its geographic spread across the West Bank, including East Jerusalem, and the Gaza Strip, and the scale and institutionalized nature of its commission, there exists a clear and pressing need not only to ensure a full understanding of this offence but also to marry this understanding with consistent employment of appropriate, legally-rooted terminology. Indeed, this is a point which has been made by former Special Rapporteur on the situation of human rights in the occupied Palestinian territory, Richard Falk, who argued that "the language used to consider Palestinian grievances relating to international humanitarian law and international human rights law in Palestine needs to reflect everyday realities, and not remain beholden to technical wording and euphemisms that mask human suffering resulting from violations."[220]

181. To clarify, BADIL does not call for all instances of displacement inside the oPt to be automatically labeled as forcible transfer, but rather that the relevant legal framework be understood and appropriately applied, and in those cases where Israel's displacement of Palestinians satisfies the respective elements of the offence, that a provisional finding of forcible transfer be made. This would represent a small but essential development, moving away from broad diagnoses lacking legal significance, such as a finding that Palestinians have been 'displaced' (without attempting to locate such displacement in its appropriate legal context) or the adoption of language which fails to fully reflect the true situation on the ground. For instance, referring to persons being 'at risk of forcible transfer' when such transfers may in fact have already taken place.

182. The closing of this analytical gap should thus be considered a moral imperative, and would in turn serve as a solid basis for efforts aimed at achieving accountability for acts of forcible transfer already committed and a deterrent against future cases. In addition, promoting accountability for those responsible for unlawful acts goes hand-in-hand with the delivery of justice to victims, as well as upholding the legitimacy of international law.

183. For any such progress to be made in the analytical space, however, there must also be concerted efforts to bridge existing lacunas in the monitoring and documentation of instances of forced displacement of Palestinians inside the oPt. This became increasingly clear during research phase of the present report, with a wide range of organizations and bodies engaged in issues pertaining to forced displacement of Palestinians lacking the necessary tools and systems to ensure accurate monitoring and cataloging of possible forcible

[220] Richard Falk. 13.01.2014. A/HRC/25/67. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*. United Nations Human Rights Council. Para. 7

transfer cases. Issues identified in this regard included failures to maintain contact with persons following home demolitions, or the use of displacement-focused research tools which omit information of critical importance to any assessment of forcible transfer, such as the stated reason(s) given by displaced persons for their 'decision' to leave their homes and communities. More widely, relevant actors too often rely upon anecdotal accounts of unlawful forced displacement without making meaningful effort to convert such accounts into qualified data.

184. In sum, consideration of the subject of forcible transfer inside the oPt gives cause for both grave concern and cautious optimism. A deficit in technical understanding has contributed to a lack of appreciation among key actors of both the extent of unlawful forced displacement throughout the oPt and the variety of means through which such displacement is pursued by Israel. Recent clear and valuable progress has been made in correcting these shortcomings, but it is essential that remaining gaps in knowledge and in the monitoring of forcible transfer be swiftly addressed. Moreover, such efforts must be simultaneously accompanied by third party states taking meaningful steps towards the realization of their legal obligation to ensure the cessation of Israeli-perpetrated forcible transfer and to hold to account those responsible for such transfers.

Accordingly, BADIL:

1. Calls upon third party states, UN and regional bodies and international and Palestinian non-governmental organizations in applying appropriate legal terminology to the present day reality in the oPt. Particularly, identifying that practices attributable to Israel - including home demolitions, widespread colonizer violence and harassment, and denial of access to essential services - and the resulting displacement, constitutes forcible transfer;
2. Urges all relevant actors to continue to develop an understanding of what constitutes a 'coercive environment' for the purpose of identifying instances of forcible transfer of Palestinians inside the oPt;
3. Emphasizes to all relevant actors that there exists no requirement under international law for forced displacement to take place as part of a formal 'relocation plan' in order to meet the legal threshold for forcible transfer;
4. Calls upon High Contracting Parties to honor their obligation under Common Article 1 of the Fourth Geneva Convention to take all available measures to halt Israel's perpetration of forcible transfer of Palestinians inside the oPt;
5. Calls upon High Contracting Parties to honor their obligation under Article 146 of the Fourth Geneva Convention to search for individuals present in their respective territory who have materially participated in the forcible transfer of Palestinians and to either bring proceedings against such persons in their national courts under the principle of universal jurisdiction, or hand over such persons to a fellow High Contracting Party so that they may be brought before a court of law;
6. Draws to the attention of the International Criminal Court Israel's continuing practices of forcible transfer inside the oPt, and highlights the *prima facie* evidence that such practices not only satisfy the required elements of war crimes under the Rome Statute, but also those of crimes against humanity;
7. Urges all organizations engaged with forced displacement inside the oPt to make all efforts to thoroughly research and document anecdotal accounts of forced displacement;
8. Urges all organizations engaged with identifying forced displacement inside the oPt to ensure that their monitoring tools and systems allow for the collation of all information relevant to ascertaining the presence of forcible transfer;
9. Urges all organizations engaged with identifying forced displacement inside the oPt to explore the feasibility of a central database for acts of forcible transfer.

Appendix
Forced Displacement Research Questionnaire

To be used in instances of forced displacement

1. Introduction
2. Demographics of the affected individual/family/group
3. The story of the affected person(s) before their most recent displacement
4. The act of displacement
5. Current Location
6. Conclusion of interview

1. Introduction

- Introduce yourself, your organization and its work generally, and the purpose of this specific research.

  The interviewee must be made aware that this is an investigation of human rights violations especially focused on his/her displacement; that the content will be used for reports which will be published in English and Arabic; and that these reports will be publically available, and provided to a number of audiences (potentially including the International Criminal Court – though the latter would require the seeking of additional, specific consent) to demonstrate that Israel is perpetrating the unlawful displacement of Palestinians.

- Do you understand the purpose of this interview?
- Do you agree with having this interview recorded and used in our future reports? Do you prefer to stay anonymous?

  Explain the participant's right to anonymity. It is preferable to document the

interview (audio or video), name and all detailed identification, but if it the interviewee refused to give such info, we must clarify that the interviewee has the right to reject recording or filming, and that he has the right to ask for maintaining the confidentiality of the interview. Highlight that the participant can withdraw their consent at any point prior to publication. Explain structure of the interview. Give a simple explanation about forcible transfer as a crime.

2. Demographics of the Affected Individual/Family/Group

- Could you please introduce yourself?

  Answer should include his/her/their personal information (such as name, age, occupation and type of ID held) and family information (such as number of family members and, in the case of refugees, the village they are originally from). The number of affected children (aged less than 18 at the time of displacement) should be noted, as should the number of UNRWA-registered refugees.

3. The story of the affected person(s) before their most recent displacement

- Could you please describe your previous living environment (answer should include location, size of population, type of property, family details, occupations etc)?
- For how long were you/your family living at that location?
- What was your status there? (land-owner, renting etc)
- How was the quality of life in that location (before the impact of any displacement factors)?
- If applicable, for what reason did you/your family move **to** the location from which you were most recently displaced?
- Have you/your family experienced any other instances of displacement? If yes, please give details (demographics, locations, dates, reasons for leaving, able to return?, etc)

4. The Act of Displacement

- When did you leave your previous location?
- For what reason(s) did you leave your previous location and move to your current location?
  - If there were multiple factors, could you rank them in order of significance?
- Were family members separated from each other during the displacement?
  - If so, were you later able to reunite?
- Did you receive any official request or demand to leave from Israeli bodies?

- Were you provided with an explanation as to why you were required to leave?
- If specific actors were involved, who were they (names; units; uniforms, general appearance etc)?
- Is there any supporting documentation (official paperwork; photos; video etc)?
- Did you take legal action to try and prevent your displacement? If yes, please provide details. If no, please outline why not.
- Did you receive any assistance (financial, legal, medical etc) from official sources (government ministries, UN agencies, NGOs) to prevent your displacement? If so, please provide details.
- Did you give any formal consent to be moved? If yes, do you feel this consent was given free of duress?
- Did any affected individuals or families give formal consent to be moved? If yes, was this consent given free of duress?
- Was any of your personal property lost or destroyed? If yes, please provide details, including rough financial cost of losses.
- Why do you think you were forced to leave? Why do you think that?
- Were other individuals or families affected? If so, please ask for details, and ask if it is possible to be put in touch.

5. Current Location

- What is your current location?
- Why did you choose this location in particular?
- What is your property status here (land-owner, renting etc)
- Who do you live with?
- Could you please describe how you got there?
- When did you arrive at your current location?
- Could you please describe your current home and living environment?
- What difficulties have you experienced since moving to your current location?
- What impact has there been on you and/or your family?
- Have you received any assistance (financial, legal, medical etc) from official sources (government ministries, UN agencies, NGOs) since your displacement? If so, please provide details.
- If possible, would you prefer to return to your previous location?
- Do you expect to be allowed to return to your previous location? If no, what prevents you from returning to your previous location?
- Do you think you could be forcibly displaced again?

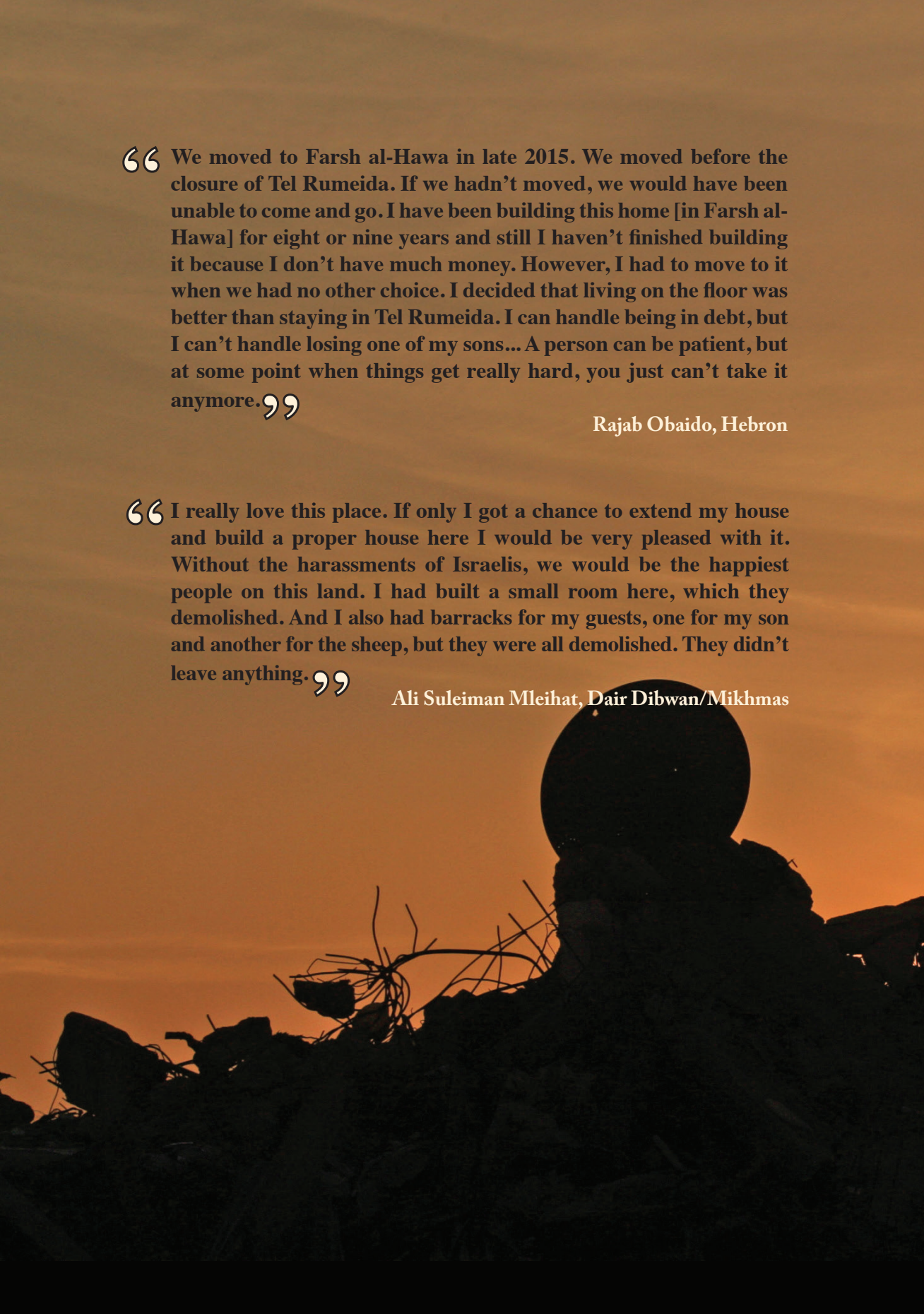
6. Conclusion of interview

- Is there anything that you would like to add?

  This question aims at allowing the victim to tell anything they want about their story of displacement that was not brought up during the interview.

- Do you know of other individuals/families/groups that have been displaced? If so, could you please put us in touch with them?
- Can I confirm that you understand the purpose of this interview and what the information will be used for?
- Confirm the best way to contact them in future, both for providing them with the resulting reports, and for any follow-up work.

[***Exchange of contacts, and highlight that the participant(s) may contact you with any update on their situation (or for any other purpose) at any point following the interview***]



“We moved to Farsh al-Hawa in late 2015. We moved before the closure of Tel Rumeida. If we hadn’t moved, we would have been unable to come and go. I have been building this home [in Farsh al-Hawa] for eight or nine years and still I haven’t finished building it because I don’t have much money. However, I had to move to it when we had no other choice. I decided that living on the floor was better than staying in Tel Rumeida. I can handle being in debt, but I can’t handle losing one of my sons... A person can be patient, but at some point when things get really hard, you just can’t take it anymore.”

Rajab Obaido, Hebron

“I really love this place. If only I got a chance to extend my house and build a proper house here I would be very pleased with it. Without the harassments of Israelis, we would be the happiest people on this land. I had built a small room here, which they demolished. And I also had barracks for my guests, one for my son and another for the sheep, but they were all demolished. They didn’t leave anything.”

Ali Suleiman Mleihat, Dair Dibwan/Mikhmas