

## **The dangers of decontextualising East Jerusalem: CCPRJ and PHROC urge the international community to address Israel's responsibility as an Occupying Power**

The Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ) and the Palestinian Human Rights Organisations Council (PHROC) are deeply concerned about the ongoing escalation of violence against civilians in occupied East Jerusalem and the Occupied Palestinian Territory (OPT) at-large. This paper will illustrate that the driving force of this escalation is Israel's belligerent occupation and continued violations of international law, which have undermined fundamental human rights of Palestinians in East Jerusalem and elsewhere in the OPT for the past 47 years. Whereas these Israeli violations have been a source of political and inter-communal tension and conflict for decades, the renewed Israeli effort for increased control of Al-Aqsa Mosque compound in the Old City of Jerusalem threatens to transform a political conflict into a "religious war". Accordingly, immediate action by the international community is necessary to hold Israel accountable for violating its duty to protect and safeguard the human rights of the civilian population within the OPT, particularly within occupied East Jerusalem.

### *Illegal annexation*

In occupied East Jerusalem, urgent action is particularly needed in order to end Israel's illegal annexation, including the associated system of Israeli domestic laws and policies that discriminate against Palestinians and deprive them of the protections of the Fourth Geneva Convention. Reaffirming that "acquisition of territory by military conquest is inadmissible,"<sup>1</sup> the UN Security Council has repeatedly determined that steps taken by Israel to alter the character and status of Jerusalem are null and void, and that the international community is to adopt practical measures in order to ensure Israeli compliance.<sup>2</sup> The International Court of Justice has affirmed this principle.<sup>3</sup>

Israel has flagrantly disregarded all calls to rescind the illegal annexation and, instead, declared occupied East Jerusalem to be part of its "undivided and united" capital under a basic law adopted in 1980. Since then, all Israeli governments, authorities and public institutions, often in collusion with private entities, have pursued the declared aim of strengthening Israeli domination over the city by changing the demographic composition of Palestinian East Jerusalem and transforming it into a predominantly Jewish area of unlawful settlements. Policies employed for this aim include the take-over of Palestinian homes and land, the unabated expansion of settlements, and discriminatory access residency and public service policies that deprive Palestinians of fundamental human rights and induce forcible displacement. Discriminatory law enforcement, including impunity for settler violence and unlawful punitive measures against Palestinians, are part and parcel of Israel's annexation and population transfer policy.

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<sup>1</sup> UN Security Council Resolution 298(1971) of 25 September 1971

<sup>2</sup> See for example UN Security Council Resolutions 476 of 30 June 1980 and 478 of 20 August 1980

<sup>3</sup> ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory of 9 July 2004, para. 74, 78, 87, 88, 117, 159

### *Population transfer*

Approximately 200,000 Israeli settlers currently reside in East Jerusalem settlements, out of a total of over 500,000 in the occupied West Bank. The number of settlers is on the rise as Israel continues to appropriate Palestinian land and expand settlements in order to fortify its control over East Jerusalem and so-called “Greater Jerusalem” in the West Bank. Israel’s settlement policy includes not only the construction and expansion of large settlements, transport infrastructure, and the Annexation Wall, but also the pinpointed takeover by settlers of individual Palestinian homes for the establishment of so-called “Jewish compounds” in the midst of the densely populated Palestinian neighborhoods in and around the Old City. Although questionable from an international law perspective and often based on extortion or fraud transactions, such settler-takeovers are usually supported by Israeli courts, while Israeli police and private security companies are deployed and financed by the state for the protection of these illegal settler “compounds”.

Israeli settlements violate Article 49(6) of the 1949 Fourth Geneva Convention, which prohibits the transfer of the Occupying Power’s own civilian population into occupied territory, as well as Article 53 of the Convention, which prohibits unlawful appropriation and destruction of public and private property in occupied territory. As such, Israel’s settlement activities constitute a breach of the cardinal rules of international humanitarian and human rights law and may amount to war crimes under Article 8 (2)(b)(viii) of the Rome Statute of the International Criminal Court.

Further, Palestinian families in East Jerusalem are forcibly evicted when settlers take over their homes. Others have been forced to leave homes located in the vicinity of settler compounds due to constant harassment and violence by settlers, police and private security personnel. Palestinians also face a variety of additional Israeli policies that compel them to leave the city. Restrictions on movement between East Jerusalem and the West Bank and the construction of the Annexation Wall have prevented access to the city for most Palestinians, while tens of thousands of East Jerusalem Palestinians are trapped behind the Wall with difficult access to public services in the city center.<sup>4</sup> East Jerusalem Palestinians are forced to choose between separation from family members in the West Bank and leaving town and losing their resident status in the city because of Israel’s “center of life” policy and restrictions on family unification.<sup>5</sup> More recently, Israeli Prime Minister Benjamin Netanyahu is considering the revocation of Jerusalem residency status for individuals related to Palestinians involved in recent violent attacks in the city.

Similar to Area C in the rest of the West Bank, Israel rarely grants building permits to Palestinians in East Jerusalem and does not provide public housing for them. This Israeli policy forces Palestinians to build without permits in order to accommodate the natural

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<sup>4</sup> OCHA “Tens of thousands of Palestinian residents of East Jerusalem are physically separated from the urban centre by the Barrier; they must cross crowded checkpoints to access health, education and other services to which they are entitled as residents of Jerusalem.”

[http://www.ochaopt.org/documents/ocha\\_opt\\_jerusalem\\_factsheet\\_august2014\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_jerusalem_factsheet_august2014_english.pdf)

<sup>5</sup> Al Haq’s report *The Jerusalem Trap*

growth of communities or even repair existing structures. As a result, nearly one-third of Palestinian homes in East Jerusalem are at risk of Israeli demolition.<sup>6</sup>

The above Israeli policies form an environment of coercion, leading to the forcible displacement of Palestinians in and from occupied East Jerusalem. Article 49 of the Fourth Geneva Convention prohibits the “individual or mass forcible transfer...of protected persons from occupied territory”, and such transfer is defined as a war crime under Article 8(2)(a)(vii) of the Rome Statute. Prohibited forcible transfer may include situations where individuals leave their home because the surrounding environment is constructed in a way that drives them to do so.<sup>7</sup> As an Occupying Power, Israel may not deprive the Palestinian population of the rights and protection afforded under the Fourth Geneva Convention.<sup>8</sup> Israel’s comprehensive, discriminatory policy that obstructs the lives and livelihoods of Palestinians in occupied East Jerusalem and leads to forced displacement breaches these obligations.

### *Impunity for settler violence, collective punishment of Palestinians*

Israel’s discriminatory law enforcement policies are extensively documented. In occupied East Jerusalem, Israeli settlers have largely been granted impunity for damaging Palestinian property, harassing and beating Palestinians, including children, in particular in the neighborhoods in and around the Old City. The UN Fact-Finding Mission on Israeli Settlements has stated the “clear conclusion that there is institutionalized discrimination against the Palestinian people when it comes to addressing violence,” noting that the intent of the violence is to “drive the local populations away from their lands and allow the settlements to expand.”<sup>9</sup>

At the beginning of July, when 16-year-old Muhammad Abu-Khdeir was kidnapped in East Jerusalem by Israeli settlers, Israeli police failed to pursue the perpetrators in time to prevent his burning alive, despite clear and ample evidence. The Israeli perpetrators were eventually arrested and their court case is still ongoing. Since then, Israeli security forces have done little to prevent and investigate the surge of violence by Israeli civilians against Palestinians, including verbal insults, threats and brutal beatings while individuals are on their way home, to work or to worship in the Al-Aqsa Mosque,<sup>10</sup> and more attempted kidnappings of Palestinian youth.<sup>11</sup>

In contrast, Palestinian public protests, in particular since the murder of Muhammad Abu-Khdeir, have been met with a brutal campaign of oppression, excessive use of force, and collective punishment by Israeli security forces and municipal authorities, including the spraying of schools and community centers with “skunk water”, a sewage-like smell that

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<sup>6</sup>[http://www.ochaopt.org/documents/ocha\\_opt\\_jerusalem\\_factsheet\\_august2014\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_jerusalem_factsheet_august2014_english.pdf)

<sup>7</sup> See Al-Haq report The Jerusalem Trap, Section 4.2.2 Forcible Displacement

<sup>8</sup> Article 47

<sup>9</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, para. 107

<sup>10</sup> CCPRJ report to the Independent Investigation Commission of the Human Rights Council

<sup>11</sup> <http://www.maannews.net/eng/ViewDetails.aspx?ID=737685>

lingers for days,<sup>12</sup> the cutting off of the water supply to Palestinian homes, home raids and arbitrary traffic fines,<sup>13</sup> fines for hanging up posters of beloved ones murdered,<sup>14</sup> and arbitrary arrest, detention, and killing of Palestinian civilians. In addition to these restrictions, the Israeli cabinet recently approved a law change whereby Palestinian stone-throwers can be imprisoned for up to 20 years. Since June, Israeli security forces have detained 1,300 Palestinians in East Jerusalem, 40% of them children.<sup>15</sup> Hundreds have been injured, and sixteen-year-old Mohammed Sunokrot was shot dead at close range as he walked to buy bread in his neighborhood of Wadi al-Joz.<sup>16</sup>

Moreover, Palestinians allegedly responsible for the killing of Israeli civilians since June have been shot and killed without fair trial to rule out that such incidents are not accidents. Furthermore, the homes of their families have been subject to punitive demolitions.

The UN Human Rights Committee has recently reiterated its concern that Israel's arbitrary counterterrorism measures, punitive home demolitions and excessive use of force against Palestinian civilians violate international humanitarian and human rights law.<sup>17</sup> Punitive house demolition is considered a grave breach under Article 147 of the Fourth Geneva Convention and amounts to war crimes according to the Rome Statute of the International Criminal Court.

More specifically, this policy is in violation of both, Article 50 of the 1907 Hague Regulations and Article 33(1) of the Fourth Geneva Convention because it punishes persons for crimes they have not personally committed. Furthermore, some of Israel's punitive policies against Palestinians, such as home demolitions, would meet all of the prescribed elements of collective punishment under Article 7 of the Rome Statute of the International Criminal Court.<sup>18</sup> In that sense, such punitive Israeli policies violate an established norm under customary international law.

### *Changing the status-quo at the Al-Aqsa Mosque Compound*

Tensions surrounding Al-Aqsa Mosque have escalated since June, when Israeli authorities restricted access for Palestinian worshippers and allowed right-wing Israelis to visit. Although Netanyahu has since then affirmed that the status quo at Al-Aqsa Mosque compound would be maintained, Israel's actions have shown otherwise. For example, during the period of 1–18 November, Israeli settlers visited the compound on 13 days. Palestinian access to Al-Aqsa Mosque compound has continued to be hindered throughout this period, including sweeping restrictions on access and harassment of women.

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<sup>12</sup> <http://www.acri.org.il/en/2014/08/10/skunk-ej/>

<sup>13</sup> <http://972mag.com/what-palestinian-media-is-saying-about-the-jerusalem-violence/98495/>

<sup>14</sup> <http://www.timesofisrael.com/arab-family-ordered-to-remove-poster-of-slain-son/>

<sup>15</sup> Statement by the Palestinian Prisoners' Society.

<sup>16</sup> CCPRJ report to the Independent Investigation Commission of the Human Rights Council

<sup>17</sup> UN Human Rights Committee, Concluding Observations from the review of Israel under the Covenant of Civil and Political Rights, 30 October 2014.

<sup>18</sup> Article 7 of the International Criminal Court's Rome Statute.

Al-Aqsa Mosque, also referred to as Al-Haram Al-Sharif, is considered the third holiest site in Islam, and is protected under international law as cultural property.<sup>19</sup> The Old City of Jerusalem, including the Dome of the Rock located in the same compound, is considered a UNESCO world heritage site. The protection of cultural property is well established under international customary law. Under the 1954 Hague Convention, State parties are required, including in situations of occupation, to safeguard and protect cultural property.<sup>20</sup> Moreover, Article 6(3) of the 1972 Convention on the Protection of the World Cultural and Natural Heritage,<sup>21</sup> establishes that each state has a duty “not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage.”

The measures taken by Israel, including excavations and allowing Israeli settlers and right-wing politicians to enter Al-Aqsa Mosque compound while restricting the rights of Palestinians to worship there, have already mounted tension in Jerusalem. Continuation of such measures will inevitably undermine the status-quo and lead to increased Israeli control of the Al-Aqsa Mosque compound, similar to the Israeli system of control imposed at the Ibrahimi Mosque in Hebron.

#### *Call for international action*

CCPRJ and PHROC call upon the international community to abandon its biased positions that have contributed to the deterioration of the situation in occupied East Jerusalem. Statements without action can no longer suffice.

We call upon the international community to acknowledge that Israel’s serious violations of international humanitarian and human rights law in occupied East Jerusalem constitute the root cause of the current violence. We remind the international community of its duty to take *immediate* steps to oblige Israel to cease these violations as recommended by the ICJ advisory opinion 10 years ago:

- High Contracting Parties of the Fourth Geneva Convention must convene a conference to assess and adopt measures that will ensure Israel’s respect of the provisions of the Convention;
- All states and the United Nations are to adopt practical measures, including sanctions, in order to ensure that Israel rescinds its policies of acquisition of occupied East Jerusalem by force, population transfer, and in violation of the Palestinian right to self-determination. All states must additionally carry out the

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<sup>19</sup> The Hague Convention of 1954 defines cultural property as “movable or immovable property of great importance to the cultural heritage of every people.”

<sup>20</sup> See generally Articles 4 & 5 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954

<sup>21</sup> Israel accepted the Convention on 6/10/1999.

necessary steps for avoiding/terminating all recognition, aid or assistance in the maintenance of the unlawful situation created by these Israeli violations.

International accountability measures must be activated and supported. Palestine should be encouraged to sign on to the Rome Statute of the International Criminal Court. Israel is to be condemned for its persistent non-cooperation with the Human Rights Council's independent investigations into alleged war crimes and crimes against humanity committed in Gaza, East Jerusalem and elsewhere in the OPT. The international community should extend maximum support to the work of the current UN Commission of Inquiry, including by promoting the entry of the Commission into Gaza via Egypt.

Finally, international organizations, including UNESCO, should adopt legal and diplomatic measures that will ensure the protection of the Old City of Jerusalem, including the Al-Aqsa Mosque compound.