



AL-HAQ



EAST JERUSALEM

EXPLOITING INSTABILITY TO DEEPEN THE OCCUPATION

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Since Israel's illegal annexation of East Jerusalem following its occupation in 1967, Israel has implemented a comprehensive policy to deepen its control over the city by weakening Palestinian presence and ties there. This includes removing the Palestinian population, either through actively revoking residency and property rights, or by creating conditions that force Palestinians to leave East Jerusalem, including through the suppression of Palestinian political, economic, social, and cultural life. At the same time, Israel endeavors to increase and fortify the Israeli Jewish presence in East Jerusalem¹ through the expansion of illegal settlements.²

As violence intensified over the past few months, Israel took escalated actions that are symptomatic of its historic policy towards East Jerusalem and its Palestinian residents. In this paper, Al-Haq examines the tightening of Israel's grip over East Jerusalem since September 2015, and assesses measures taken by Israel in light of its obligations as Occupying Power under international human rights law and international humanitarian law.

1 This includes the Jerusalem 2020 plan by Nir Barakat, which is grounded on Jerusalem as the "eternal capital." See Nir Barakat, *Jerusalem 2020*, TIMES OF ISRAEL, 17 May 2015, available at <http://blogs.timesofisrael.com/jerusalem-2020/>.

For a critique of the 2020 plan, see Sami Ershied, *Voices From Jerusalem: What is Behind Jerusalem's First Master Plan Since 1967?*, HUFFINGTON POST, 30 July 2009, available at http://www.huffingtonpost.com/ir-amim/what-is-behind-jerusalems_b_222101.html.

2 See PM Netanyahu to EU: 'Jerusalem is our capital, not a settlement', i24news, 7 November 2014, available at <http://www.i24news.tv/en/news/israel/diplomacy-defense/50059-141107-netanyahu-orders-to-demolish-terrorists-houses-in-jerusalem>; Lieberman: Israel will never limit East Jerusalem settlement building, Ynet, 16 November 2014, available at <http://www.ynetnews.com/articles/0.7340.L-4592392.00.html>.

I. INTRODUCTION

THE STARTING POINT

East Jerusalem is part of the Occupied Palestinian Territory (OPT), and therefore the law of belligerent occupation is the applicable legal framework. Israel, however, extended its national laws to East Jerusalem that established its *de facto* illegal annexation and forced the category of ‘permanent residents of Israel’ on Palestinians in East Jerusalem. By doing so, it has been able to implement measures that are unique to East Jerusalem and the Palestinians who reside there in order to serve its broader objective of imposing Jerusalem as a capital for Israel.³

Accordingly, the nearly 300,000 Palestinians in East Jerusalem are vulnerable and targeted. Seventy-five percent live below the poverty line as a result of various discriminatory policies relating to the right to housing, education, and equal employment opportunities, amongst others.⁴ While Israel encourages and accelerates the expansion of Jewish settlement activities in East Jerusalem, including by a 2015 Israeli High Court of Justice (HCJ) decision regarding the Absentee Property Law,⁵ it imposes on Palestinians a discriminatory planning and licensing permit system which leads to substandard living conditions. The physical results of this system are visible across East Jerusalem with dilapidated and inadequate infrastructure, [home demolitions](#), and displacement. Palestinians are often forced to [self-demolish](#) in order to minimize exorbitant fines. Between

3 *Netanyahu: Jerusalem has and always will be the capital of the Jewish people*, THE JERUSALEM POST, 17 May 2015, available at <http://www.jpost.com/Israel-News/Netanyahu-Jerusalem-has-and-always-will-only-be-the-capital-of-the-Jewish-people-403357>.

4 Association for Civil Rights in Israel (ACRI), *East Jerusalem 2015: Facts and Figures*, available at <http://www.acri.org.il/en/wp-content/uploads/2015/05/EJ-Facts-and-Figures-2015.pdf>, 12 May 2015.

5 The discriminatory 1950 Absentee Property Law aimed at confiscating the property of Palestinian refugees. In April 2015, the Israeli High Court of Justice ruled that the state could confiscate property in East Jerusalem owned by West Bank residents under the law. See Nir Hasson, *Supreme Court Rules: Israel Can Confiscate Palestinian Property in Jerusalem*, HAARETZ, 16 April 2015, available at <http://www.haaretz.com/israel-news/1.652231>.

January 1 and August 31, 2015 alone, 37 structures were demolished in East Jerusalem due to the absence of a building license, displacing 57 individuals.⁶ According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), at least one-third of Palestinian homes lack building permits, consequently putting over 90,000 individuals at risk of displacement.⁷ Poor living conditions are exacerbated by the deficient provision of services, ranging from lack of garbage collection to Israel's failure to provide sufficient [classrooms](#) for Palestinian children.

Intensifying the situation is Israel's policy of fragmentation. East Jerusalem is not only isolated from the rest of the West Bank, but Palestinian neighborhoods in East Jerusalem are cut off from each other by checkpoints, the Annexation Wall, settlements and other barriers.⁸ Further, Israel regularly seals off these areas as a form of collective punishment. Limitations on movement and access extend to arbitrary restrictions on Palestinian Muslim and Christian holy sites, including during religious holidays. While recent attacks on [Al-Aqsa Mosque Compound](#) are considered as a spark for the current unrest, they are a routine part of Israel's Jerusalem policy.

Palestinian Jerusalemites suffer these intolerable conditions in order to maintain their residency and access to the city of their birth. Even when these conditions are endured, threats of residency revocation by means of Israel's "center of life" policy,⁹ restrictive family unification, and other measures remain. Israel also uses other arbitrary actions resulting in forcible displacement from individual homes coupled with travel bans. Some Palestinians have received orders temporarily banning them from

6 This figure includes one self-demolition. Between January 1-August 31, 2015, Al-Haq documented the demolition of 273 structures, including five self-demolitions, leading to the displacement of 617 individuals throughout the West Bank, including East Jerusalem.

7 United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *East Jerusalem: Key Humanitarian Concerns Update August 2014*, available at http://www.ochaopt.org/documents/ocha_opt_jerusalem_factsheet_august2014_english.pdf.

8 See Al-Haq, Report, *The Jerusalem Trap*, 2010, available at <http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap> (2010).

9 Under this policy, Palestinians from East Jerusalem may lose their permanent residency status if they do not prove their continuous residency through the provision of documentary evidence. *Id.*

Jerusalem, where they were born and live.¹⁰ Others have even been banned from being in the West Bank more broadly by Israeli authorities, essentially requiring relocation to Israel.¹¹

Israel's East Jerusalem policy also aims at crushing Palestinian political and cultural life there. Israel has forced the closure of over 100 Palestinian social, cultural, and political institutions in Jerusalem since its occupation in 1967. Some institutions currently experience frequent temporary closures, often when hosting political and national events. Most recently, the Palestinian National Theater "Al-Hakawati" is threatened with closure due to "municipal debts."¹² Israeli authorities regularly close down events at Al-Hakawati.¹³ In addition to often banning public events that foster the Palestinian community, the Israeli government imposes Israeli-centered curriculums in most schools in East Jerusalem that omit recognition of Palestinian national identity, the occupation, and the Nakba, among other topics central to Palestinian history.

Palestinian political life in East Jerusalem has also been suppressed, especially by the closure of the Orient House in 2001, which served as the Palestinian Liberation Organization's headquarters in Jerusalem. In addition, there has been a clear attempt by Israel to deny Palestinian

¹⁰ For example, Fares Ayman 'Ewisat, 22, is a resident of Jabal Al-Mukabber in East Jerusalem. In December 2014, Fares was summoned to the Israeli police station in West Jerusalem where he was handed a deportation order from Jerusalem, East and West, issued by the Israeli Occupation Forces (IOF). The order to vacate was between 24 December 2014 and 22 May 2015. The officer in charge gave Fares two hours to leave Jerusalem. Fares said goodbye to his wife, child, family, and friends and relocated to other areas of the West Bank. (Al-Haq Affidavit No. 10414/2015). Fares is now back in Jerusalem with his family.

¹¹ One political activist from Jerusalem reportedly received an order banning him from Jerusalem, and a second order banning him from the rest of the West Bank. See Rachele Friesen, *Tour guide, political activist banned from his native Jerusalem*, Electronic Intifada, 12 December 2014, available at <https://electronicintifada.net/content/tour-guide-political-activist-banned-his-native-jerusalem/14112>;

see also GENEVA CONVENTION IV, 75 U.N.T.S. 287, art. 49, entered into force 21 October 1950 ("Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power...are prohibited, regardless of their motive.").

¹² Luke Baker, *Acclaimed Palestinian theatre in Jerusalem risks closure*, Reuters, 27 November 2015, available at <http://uk.reuters.com/article/2015/11/27/us-israel-palestinians-theatre-idUKKBN0TGOTO20151127>.

¹³ Amria Hass, *Israel Blocks East Jerusalem Children's Festival*, Citing Link to Palestinian Authority, HAARETZ, 24 June 2013, available at <http://www.haaretz.com/israel-news/1.531576>; See also *Israeli Police bar Cultural Festival in Jerusalem*, IMEMC, 26 March 2008, available at <http://www.imemc.org/article/53744>.

in East Jerusalem from exercising the fundamental rights of political participation and representation.¹⁴ For example, after being freely elected during the January 2006 elections to the Palestinian Legislative Council, three East Jerusalem parliamentarians were arrested in June of 2006, and sentenced to prison time in an Israeli military court.¹⁵ A former minister for Jerusalem affairs in the Hamas government was also arrested.¹⁶ Immediately following the election and the parliamentarians' refusal to step-down, the then-Israeli Minister of Interior announced his decision to revoke the four politicians' permanent residency, for "breach of trust" on account of their membership with a Hamas affiliated political party.¹⁷

In total, since Israel's illegal annexation, Palestinians in East Jerusalem have lived in perpetual uncertainty and fear. Any questioning of or resistance to Israeli policy can lead to both community-wide and individual repercussions. The aforementioned practices, and countless others, form one Israeli policy toward Palestinians in East Jerusalem. Such a systematic deprivation of rights may amount to the crime against humanity of persecution under international criminal law.

14 Al-Haq, *Israel Escalates Policy of Political Repression In East Jerusalem*, available at <http://www.alhaq.org/advocacy/targets/european-union/523-israel-escalates-policy-of-political-repression-in-east-jerusalem> (2 February 2012); see also INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 99 U.N.T. 171. art. 25, entered into force on 23 March 1976.

15 Al-Haq, Legal Analysis, *Forcible Transfer of Jerusalem Parliamentarians Demonstrates an Escalation of Israeli Measures to Transfer Palestinians from Occupied East Jerusalem*, available at <http://www.alhaq.org/advocacy/topics/population-transfer-and-residency-right/303-al-haq-legal-analysis-forcible-transfer-of-jerusalem-parliamentarians-demonstrates-an-escalation-of-israeli-measures-to-transfer-palestinians-from-occupied-east-jerusalem-> (17 June 2010).

16 B'tselem - The Israeli Information Center for Human Rights in the Occupied Territories (B'tselem), *In dangerous precedent, Israel revokes residency of four Palestinians affiliated with Hamas from East Jerusalem and acts to forcibly transfer them*, available at http://www.btselem.org/jerusalem/20100718_revocation_of_residency_of_hamas_mps (18 July 2010).

17 *Supra* note 15. See also Adalah The Legal Center for Arab Minority Rights in Israel (Adalah), Press Release: *Israeli Supreme Court: Members of the Palestinian Legislative Council whose Jerusalem Residency Status was Revoked Must be Given an Opportunity to Submit Applications to Reinstate it*, available at <http://www.adalah.org/en/content/view/6866> (17 September 2008).

CURRENT UNREST

While attacks on Al-Aqsa Mosque Compound in East Jerusalem may have triggered the current situation, Palestinian frustration and the current state of unrest throughout the OPT is the outcome of Israel's occupation. However, rather than fulfill its duties as Occupying Power and examine the root cause of events, Israel has reacted with repression.

Using security as a pretext, Israel has implemented unprecedented acts of collective punishment, excessive use of force, and other attacks against Palestinians and civilian infrastructure, including hospitals, and has exploited the present situation to expedite existing aims across the OPT. This is especially evident in East Jerusalem, where Israel instituted a series of severe measures that target Palestinians.

First, by continuing to correlate stone-throwing with terrorism,¹⁸ Israel attempted to justify the sweeping and extreme changes to live fire regulations and minimum sentencing guidelines.¹⁹ Next, under measures passed on October 13, the Security Cabinet instituted broad penalties²⁰ against "terrorists" which will inevitably result in collective punishments. By using the broad brush of terror, Israel attempts to defend its oppressive policies, but in fact violates its international obligations.

In 2015, the United Nations (UN) Special Rapporteur on the promotion and

18 Such language has been continually used by Israeli leaders. For example, Justice Minister Ayelet Shaked, in discussing issuing harsher punishments for stone throwers stated, "The tolerance shown to terrorist ends today. A stone-thrower is a terrorist, and only a proper punishment can be a deterrent." See *Israeli lawmakers approve tougher law against rock throwers*, Jewish Telegraphic Agency, 21 July 2015, available at <http://www.jta.org/2015/07/21/news-opinion/israel-middle-east/knesset-lawmakers-approve-law-against-rock-throwers>.

19 Prime Minister Benjamin Netanyahu stated "We cannot accept the principle that in Jerusalem our capital, or in any part of the State of Israel, in the Galilee or in the Negev, that people will organize terrorism and begin to stone passing cars or throw stones and murder people. This norm will not be established here; rather an opposite norm will – we will act against you and stop you, and we will punish you with the full force of the law." Israel Ministry of Foreign Affairs, *Cabinet Communiqué*, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Cabinet-communicue-20--September-2015.aspx> (20 September 2015).

20 This included the "demolition of terrorists' homes", the confiscation of "the property of terrorists", and the revocation of the "permanent residency rights of terrorists." Israel Ministry of Foreign Affairs, *Security Cabinet approves anti-terror measures*, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Security-Cabinet-approves-anti-terror-measures-13-Oct-2015.aspx> (13 October 2015).

protection of human rights and fundamental freedoms while countering terrorism highlighted the principle of legality and noted “the adoption of overly broad definitions of terrorism carries the potential for deliberate misuse — including as a response to claims and social movements of indigenous peoples — and unintended human rights abuses. Unclear, imprecise or overly broad definitions can be used to target civil society, silence human rights defenders, bloggers and journalists, and criminalize peaceful activities in defence of minority, religious, labour and political rights.”²¹ These concerns are applicable to Israel’s historic²² use of “terrorism” legislation, and measures passed in 2015.²³

Consequently, through Israel’s ambiguous, expansive measures and practices aimed at instilling more fear and quashing any form of dissent, including peaceful protest, East Jerusalem is slowly returning to a tense calm where its Palestinian residents remain targeted.

21 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, U.N. Doc. A/70/371, para. 14 (18 September 2015).

22 In 2003, the UN Human Rights Committee noted its concern regarding “the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant.” See Concluding Observations of the Human Rights Committee, U.N. Doc. CCPR/CO/78/ISR, para. 14, available at <https://www1.umn.edu/humanrts/hrcommittee/israel2003.html> (2003).

These concerns were reiterated in a 2007 report by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Mission to Israel, including visit to Occupied Palestinian Territory, U.N. Doc. A/HRC/6/17/Add.4, para. 16 (16 November 2007).

23 In early September, the Israeli Knesset approved the first reading of the proposed new and sweeping “Anti-Terrorism Law.” The law appears to be aimed at quashing and criminalizing the political activity of Palestinian citizens of Israel who oppose the Occupation. See Adalah, Press Release: *A dangerous escalation of repression in Israel: Knesset approves first reading of the proposed “Anti-Terrorism Law*, available at <http://www.adalah.org/en/content/view/8630> (3 September 2015).

According to reports, the law dramatically expands the definition of terror and terror organizations and increases jail time for terrorists, among other changes, which provide the Israeli government with increased authority. See Jonathan Lis, *Sweeping Anti-terror Bill Passes First Reading in Knesset*, HAARETZ, 3 September 2015, available at <http://www.haaretz.com/israel-news/premium-1.674043>.

II. EXPANSION OF POLICE POWERS

Since September 2015, Israel has instituted a series of actions that further target Palestinians in Jerusalem through the use of lethal force, searches without reasonable suspicion, and widespread arrest and detention. While these measures appear neutral on their face, in reality it is understood that they only apply to Palestinians.²⁴ Through discriminatory legislation and practice that threaten rights to life, security and liberty, amongst others, Israel aims to assert more control over the Palestinian population.

A. RELAXATION OF LIVE FIRE REGULATIONS

In late September, the Israeli Security Cabinet approved disproportionate measures against “rock-throwing in Jerusalem” that will inevitably lead to violations of the right to life.²⁵ The Security Cabinet changed regulations to allow Israeli police to open fire not only when their own lives are in danger, but also when there is “an immediate and concrete danger to police or civilians.”²⁶ The Cabinet also approved the use of the “Ruger” sniper rifles,²⁷ which may be lethal or cause serious bodily harm.²⁸ These measures have been coupled with Israeli leaders justifying and encouraging the increased use of force by the Israeli Occupation Forces (IOF) and settlers. Incitement has included Nir Barakat, the

24 One former Israeli Supreme Court judge criticized sentencing policies and the politicization of legislation. See Noah Sphigel, *Judge Blasts New Minimum Sentencing Policy: 'Do Only Arabs Throw Stones?*, HAARETZ, 16 November 2015, available at <http://www.haaretz.com/israel-news/.premium-1.686310>.

25 Israel Prime Minister's Office, *Security Cabinet Statement*, available at <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spoke.Jerusalem240915.aspx> (24 September 2015).

26 *Id.*

27 *Id.*

28 According to statistics by B'tselem, at least 4 Palestinians were killed by the IOF with the use of the Ruger rifle from January to the beginning of October 2015. See B'tselem, Press Release: *Security forces must immediately cease use of Ruger rifle and 0.22 caliber bullets*, available at http://www.btselem.org/press_releases/2015106_cese_use_of_022_inch_bullets (6 October 2015).

mayor of Jerusalem, and the Minister of Defense Moshe Ya'alon, calling for citizens to carry firearms, and MK Yanon Megal calling for a “bullet to the head of anyone who carries a knife to kill.”²⁹ Israel’s Internal Security Minister then facilitated the possibility of more violence by relaxing laws for gun licensing.³⁰

Israel’s use of live-fire and excessive force against Palestinian demonstrators and statements of support by Israeli leaders is a natural continuation of Israel’s treatment of Palestinians. During the first intifada, then Israeli Minister of Defense Yitzhak Rabin called for the “breaking of bones” of Palestinian protestors.³¹

The new measures target Palestinian East Jerusalemites and ultimately authorize the same excessive use of force by Israel as seen in the rest of the Occupied Palestinian Territory, where military orders allow the IOF to use live fire against demonstrators.³² The practical impact of the measures are already clear- the policy changes have meant an increase in Palestinian deaths and injuries in East Jerusalem. Al-Haq has documented the death of 23 Palestinians killed by the IOF in Jerusalem since the beginning of October, in addition to one killed by an Israeli settler. As of 19 November, 852 Palestinians were injured with live ammunition across the OPT. According to the Palestinian Red Crescent Society, 29 of these injuries were in Jerusalem.

29 See Nir Hasson, *Jerusalem Mayor Calls on Civilians to Carry Weapons in Wake of Terror Attacks*, HAARETZ, 8 October 2015, Haaretz, available at <http://www.haaretz.com/israel-news/premium-1.679383>. Ya'alon urges licensed civilians to carry firearms. See *Riots reported in Arab towns*, 9 October 2015, THE JERUSALEM POST, <http://www.jpost.com/Arab-Israeli-Conflict/Yaalon-urges-licensed-civilians-to-carry-firearms-Riots-reported-in-Arab-towns-421456>; Nana 10, 10 November 2015, available at <http://news.nana10.co.il/Article/?ArticleID=1152196>.

30 Ari Soffer, *Israel to Relax Gun Laws amid Wave of Terror*, Arutz Sheva 7-Israel National News, 14 October 2015, available at http://www.israelnationalnews.com/News/News.aspx/201893#_VkcYntlrLV.

31 *Intifada: Then and now*, BBC News, 8 December 2000, available at http://news.bbc.co.uk/2/hi/middle_east/1061537.stm.

32 B'tselem, *Press Release: Military steps up use of live 0.22 inch bullets against Palestinian stone-throwers*, available at http://www.btselem.org/press_releases/20150118_use_of_live_ammunition_in_wb (18 January 2015).

Al-Haq field researcher documented a witness statement recounting a killing in Shufat Refugee Camp, Jerusalem.

[A]t around 3:25pm I heard a sound canister explode. I approached the window to see what was going on and saw a large number of Occupation Forces (IOF) storming an alley in the Camp that leads to Subhi's home. There were about 200 of them...The IOF were attempting to break into the home of the Alqam family...the IOF began to randomly fire live ammunition, leaving bullet marks in the buildings. I am positive that the IOF was using live bullets, because other bullets do not leave the same mark...I saw other members of the IOF breaking into several other homes and taking over their rooftops... I saw a young Palestinian man wearing a white shirt with his face covered, standing 50 meters from the IOF. He was throwing stones from the rooftop of the 4th floor home across the street, but was at a lower elevation than the IOF snipers that were also perched on a rooftop. Then I heard several gunshots, which appeared to come from the IOF that was on the ground. The young man continued to throw stones. The gunshots stopped for a second, then I heard one shot, and the young man fell. Three Palestinian young men tried to reach him, but they were all shot with live ammunition. I could not tell if they were hit with sniper fire from the rooftops, or with fire from the IOF on the ground. The IOF continued to shoot live rounds with intensity. The young man was left lying on the rooftop for 12 minutes. I was able to photograph everything that happened on my phone. The IOF then left the area, and several men went to remove the young man's body from the rooftop. I later learned that the young man that was shot died as a result of his injuries. His name is Wesam Jamal Talib Faraj, he is around 20 years old, and a resident of the Shufat Refugee Camp.

Al-Haq Affidavit # 2015/11053

In addition to Palestinians being shot with live fire in the course of demonstrations and clashes, the period since the change in live-

fire regulations has also seen a broader “shoot to kill” policy being implemented, even when non-lethal means are sufficient to control a situation. The widely reported killing of Fadi Alloun, 19, provides a stark example of this policy. On 4 October, Fadi was killed in Al-Musrara area of East Jerusalem. While Israel claims that Fadi had carried out a stabbing attack, published [videos](#) from at least two angles clearly show Fadi being surrounded by Israeli settlers who then call on the police to shoot Fadi. At the time of his killing by police, Fadi did not pose an imminent threat to any individual in the area, and could have been detained using non-lethal measures. Following his death, Fadi’s body was held for one week and the Israeli authorities refused to carry out an autopsy as requested by the family. Fadi’s killing, unfortunately, is not unique. Since the beginning of October, 21 Palestinians from East Jerusalem have been killed on the spot,³³ on mere allegation of attacks. Two UN Special Rapporteurs recently noted that many similar cases of excessive force are “captured on video” and “appear to amount to summary executions.”³⁴

The change in live-fire regulations is inconsistent with international standards, which hold that the use of lethal weapons is permitted only in extreme and highly exceptional circumstances, where there is a real, imminent danger to human life, and all other means have been exhausted.³⁵ Specifically, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that all security forces shall apply non-violent methods before resorting to the use of force and firearms.³⁶ Further, “whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offense and the legitimate objective

33 According to Al-Haq documentation, 2 died later due to their injuries.

34 *UN rights experts express deep concern about ongoing bloodletting in the Occupied Palestinian Territory*, Joint Press Release, 16 November 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16759&LangID=E>.

35 See UN General Assembly, *Code of conduct for law enforcement officials*, 5 February 1980, A/RES/34/169, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>; and United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles)*, 27 August to 7 September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.

36 Basic Principles at art. 4.

to be achieved.”³⁷ This includes the duty to “minimize damage and injury, and respect and preserve human life.”³⁸

The deaths of Palestinians in the OPT, including East Jerusalem, may amount to [unlawful](#) and arbitrary killings in violation of the right to life under international human rights and humanitarian law.³⁹ Notably, the International Committee of the Red Cross (ICRC) Commentary on Rule 89 Violence to Life states “the prohibition of ‘arbitrary deprivation of the right to life’ under human rights law...also encompasses unlawful killing in the conduct of hostilities.”⁴⁰ As the number of Palestinian deaths rise, Israel has rarely questioned by way of a transparent investigation as to whether the use of force was necessary or proportional, even with increasing video evidence that puts into question the actions of the IOF and Israeli Police.⁴¹ The Human Rights Committee has affirmed that States parties must “prevent and redress unjustifiable use of force in law enforcement.”⁴²

This context of impunity is tied to the aforementioned statements of Israeli leaders calling for Israeli Jews to arm themselves and inciting violence against Palestinians. Article 20(2) of the International Covenant

37 *Id.* at art. 5(a).

38 *Id.* at art. 5(b).

39 See INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 99 U.N.T. 171, art. 6, *entered into force* on 23 March 1976; HAGUE CONVENTION (IV) RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND (Hague Regulations), art. 46, *entered into force* 18 October 1907; GENEVA CONVENTION IV, 75 U.N.T.S. 287, art. 27, *entered into force* 21 October 1950.

40 International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, Rule 89, available at https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule89.

41 Palestinian woman Israa’ Abed, 29, who was shot multiple times by Israeli police at the Afula bus station was cleared of all charges against her. Police had alleged that she intended to carry out a stabbing attack following their assault on her. See Jack Khoury, *Israeli Arab Woman Shot in Bus Station Not a Terrorist, Conclude Security Services*, HAARETZ, 28 October 2015, available at <http://www.haaretz.com/israel-news/1.682928>. Hadil Hashlamoun, 18, was killed by the IOF in Hebron after she allegedly held a knife. An inquiry by the IOF later determined that her death could have been avoided. See Gili Cohen, *IDF Inquiry: Shooting of Palestinian Girl in Hebron Could Have Been Avoided*, HAARETZ, 1 November 2015 <http://www.haaretz.com/israel-news/premium-1.683193>.

42 Human Rights Committee, *General Comment 35*, Article 9 (Liberty and security of person), 16 December 2014, U.N. Doc. CCPR/C/GC/35, para. 9.

on Civil and Political Rights (ICCPR) states “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Further, in regards to the right to personal security, the Human Rights Committee has affirmed States parties obligations “to take appropriate measures...to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.”⁴³ Instead, incitement by Israeli leaders is rarely investigated.⁴⁴

B. SEARCHES WITHOUT REASONABLE SUSPICION

During the recent escalation of violence, Israel also approved a bill allowing police to conduct physical searches on any person without reasonable suspicion that the person is armed. The bill lists various places where the police would be able to search persons upon entry, including recreational places such as playgrounds and coffee shops.⁴⁵ The bill would also apply to any area that a district police chief “temporarily declares a place where such searches can be conducted, if it’s a place where a special security risk exists[.]”⁴⁶ This leaves the police with broad discretion to carry out invasive searches anywhere they deem a “special security risk exists,” without requiring sufficient justification. Current Israeli legislation only allows police to conduct searches of a person or premises wherever there is suspicion that a crime has been committed or is about to be committed. While this bill has not been passed into law, police are acting *ultra vires* the law in East Jerusalem, including in the Old City, where individuals have been searched both at checkpoints and at random without reasonable suspicion.

Al-Haq field researcher reported on the case of Marwan Rishiq, a

43 *Id.*

44 See e.g. Adalah, Press Release: *State Attorney’s office rejects request for criminal investigation into Lieberman’s “ax” comment*, available at <http://www.adalah.org/en/content/view/8565> (1 June 2015); Adalah, Press Release: *Adalah Demands Criminal Investigation into Minister Naftali Bennett for Incitement to Violence*, available at <http://www.adalah.org/en/content/view/8195> (1 August 2013).

45 See Jonathan Lis, *Israeli Cabinet Backs Bill Allowing Police to Frisk Anyone*, HAARETZ, 18 October 2015, available at <http://www.haaretz.com/israel-news/.premium-1.681082>.

46 *Id.*

23-year-old residing in the Jerusalem neighborhood of Ras Al-Amoud. On 18 October 2015, at around 3:30pm, Marwan was on his way to pray at the Al-Aqsa Mosque when he was stopped at an inspection point at the Damascus Gate. Special Israeli Forces began to yell in his direction. Marwan turned around and realized that the Forces were yelling at him, so he approached them. Marwan barely took a few steps before the Israeli Special Forces pointed their weapons at his face and yelled for him to stop. They then ordered Marwan to lift his shirt and remove all items from his pockets. An officer from the Special Forces then used his hands to inspect Marwan's person. The other officers were staring at Marwan, apparently seeking to provoke him, but he remained calm and obeyed their orders. Marwan said that he was in a state of terror the entire time, his heart was beating furiously, and all he could think about was the fact that the Israeli Special Forces could shoot him at any moment and then claim that he had attempted to attack them.

These arbitrary searches, amongst other measures used by Israel, serve to intimidate and instill fear in the Palestinian population. Moreover, the bill is inconsistent with international human rights and international humanitarian law standards. Article 17 of the ICCPR states:

- “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence, nor to unlawful attacks on his honor or reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.”⁴⁷

Article 27 of the Fourth Geneva Convention similarly holds that “Protected persons are entitled, in all circumstances, to respect for their persons, their honor...They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.” Rather than ensure fair treatment and protection for Palestinians, the bill instead allows police to further harass and intimidate the occupied population.

⁴⁷ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 99 U.N.T. 171. art. 17, *entered into force on 23 March 1976*.

C. ARRESTS AND DETENTION

The recent escalation of violence has also meant that the number of arrests in East Jerusalem is on the rise, as Israel seeks to limit any sort of political opposition. The Palestinian Ministry of Prisoners Affairs, has recorded 669 arrests of Palestinians from East Jerusalem from the beginning of October to 21 November 2015; 28 of these are held in administrative detention. Of the total, 220 are minors. Twenty-six of the minors are 12-years old or younger. Nine of the total minors are female. Three children are held in administrative detention. According to documentation by Defense for Children International Palestine, it is the first time that Israel has held children in Jerusalem without charge or trial under administrative detention since the organization began documenting cases there in 2000, and the first time in the West Bank at large since 2011.⁴⁸ On 25 November, the Israeli Knesset held a preliminary reading of a draft bill that allows “minors under the age of 14 who were convicted of terror-related” charges to receive prison sentences.⁴⁹ Such a bill is problematic because of Israel’s ambiguous use of “terrorism” and its inconsistency with international standards regarding the principle of legality, and also because Israel seeks to excessively criminalize and punish minors while ignoring its obligations under the Convention on the Rights of the Child. Moreover, arrest and detention of children are used by Israel as a means of intimidating and putting pressure on families in East Jerusalem.⁵⁰

48 Defense for Children International- Palestine (DCI), *Three East Jerusalem teens held in administrative detention*, available at http://www.dci-palestine.org/three_east_jerusalem_teens_held_in_administrative_detention (27 October 2015).

49 Israeli Knesset, Press Release: *Approved in preliminary reading: Prison sentences for minors under 14 who were convicted of terrorism*, available at https://www.knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=11782 (25 November 2015).

50 See DCI, *For Palestinian Children of East Jerusalem, the Exception is the Rule*, available at http://www.dci-palestine.org/for_palestinian_children_of_east_jerusalem_the_exception_is_the_rule (29 July 2015) and *Arrest and abuse by Israeli police are part of life for children in Silwan*, available at http://www.dci-palestine.org/arrest_and_abuse_by_israeli_police_part_of_life_for_children_in_silwan (22 February 2014).

Al-Haq field researcher recorded the testimony of one child, 9-year-old Malik Othman Karawi, detained by the IOF.

I am a 9-year-old boy. I live in Al-Tur in Jerusalem and attend the Khalid Rashid Elementary School. I am in the 4th grade. On Tuesday, 10 November...I arrived to a small store that sells sweets, owned by my uncle Ahmed. I went to the small store after I picked up my sister (Ghazal, 7 years old). My brother Qusay (8 years old) and my cousin Muhammad (5 years old) were with us. We were sitting inside the store on chairs. While I was still inside the store, there were stones being thrown at the Israeli Occupation Forces, but suddenly 3 members of the Israeli Special Police Force, who were armed and wearing helmets and protective vests came into the store. My uncle tried to stand between us and them. They grabbed him from his neck and moved him over. Myself and the rest of the kids were crying and were in fear... Suddenly, a member of the force, who was standing outside of the store, reached in through the store's large window, and grabbed me from the hood of my shirt, pulling me out of the store...I was then taken in an Israeli police car with my uncle, Rami...which took us to the Israeli police center in Jabbal Al-Mukkabir. At the police station, a policeman who spoke Arabic led my father, who heard what happened and came to the police station, and I into a room. I was asked if I saw any children throwing stones, at what time, and if I knew them or their names. I told him that I did not know their names. He told me that if I knew something I should say it, and the police would not do anything to me, but I told him again that I did not know anything. The interrogation lasted for about an hour. I was very scared and was afraid that the police would arrest me and that I would not see my mother and my friends. I also thought about how my mother would cry...We returned home. I am afraid that I will be arrested again.

There has also been an escalation in the arrest of Palestinians accused of allegedly inciting violence on social media. According to Addameer, Israel has arrested tens of Palestinians in the OPT and within the Green Line

on these charges. On 12 October 2015, Ibrahim Isami'l Shweiki, 21, was arrested at approximately 11:30 am from his work place in Jerusalem.⁵¹ His father received a phone call later that evening informing him that Ibrahim was being held at the Russian Compound in Jerusalem. Ibrahim was accused of incitement through his personal Facebook account; Ibrahim, however, claims his account was hacked. His father supports his son's claim, and noted that on 11 November 2015, after his son was detained, new posts were published on Ibrahim's personal account. The posts published on Facebook included: "death for the sake of Allah" and "anything for you 'Alloun." Ibrahim remains in detention; his next court session will be on 18 January 2016. Following his arrest, the IOF raided Ibrahim's home in Ras Al-'Amoud where his family lives. According to Ibrahim's father, the raid was vicious. The IOF blew up the house door, beat him and his youngest child, and arrested Ibrahim's brother Malek, 18. Arrests like Ibrahim's are a violation of the right to freedom of expression and the right to privacy.

In addition to individuals that may participate in demonstrations or other political activities, Israel has used the threat of arrest and detention as a method to instill fear across Palestinian society and impede other rights.⁵² Following attacks on Israeli Jews in the Old City, Palestinian shopkeepers were also arrested for allegedly not rendering assistance to the victim. Israeli media reported that although individuals were released, "stores were ordered closed for two weeks."⁵³ Charges against individuals for failing to render assistance, however, are difficult to bring as Israeli law stipulates that an assisting party should not be put in danger.

The right to liberty and security of person, and the prohibition against arbitrary arrest and detention, are affirmed under international human rights law.⁵⁴ Customary international humanitarian law prohibits the

51 Al-Haq phone interview with Ibrahim's father Ismai'l Shweiki on 28 November 2015.

52 The Human Rights Committee affirmed that "the deprivation of liberty and security of person have historically been principal means for impairing the enjoyment of other rights." *Supra* note 43 at para. 2.

53 Nir Hasson, *Jerusalem Gets Petty with Muslim Quarter Merchants*, 15 October 2015, HAARETZ, available at <http://www.haaretz.com/news/israel/1.680485>.

54 *Supra* note 48 at art. 9.

arbitrary deprivation of liberty.⁵⁵ The Human Rights Committee has clarified that “The notion of ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”⁵⁶ Israel’s use of arbitrary arrest and detention, including administrative detention, is contradictory to its obligations as Occupying Power. In its last periodic review of Israel, the Human Rights Committee called on Israel to end its practice of administrative detention.⁵⁷

I. SENTENCING GUIDELINES FOR STONE-THROWERS

The September Cabinet measures intensifying live-fire orders for police detailed an increase in punitive measures against stone-throwers.⁵⁸ Individuals will face a minimum sentence of 3 years with a maximum punishment of up to 15 years; those convicted may only be granted suspended sentences in exceptional circumstances.⁵⁹ Harsher punitive measures against children were also approved. Minors between the ages of 14 and 18 may now serve prison time for throwing stones, firebombs and fireworks.⁶⁰ The law further upholds that parents of jailed minors “will not receive National Insurance Institute benefits while” the minor serves out his sentence.⁶¹

The strict sentencing guidelines for stone-throwing ignore the legal principle of proportionality as they are likely to be excessive in light of the offense. Punishments may lawfully be imposed only against people who have been convicted of a crime after a fair trial, must be proportionate

55 *Supra* note 41 at rule 99.

56 *Supra* note 43 para. 12.

57 Human Rights Committee, *Concluding observations on the fourth periodic report of Israel*, 21 November 2014, U.N. Doc. CCPR/C/ISR/CO/4, para. 10(b).

58 *Supra* note 26.

59 Israel Ministry of Foreign Affairs, *Knesset approves harsher punishments for rock-throwing*, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Knesset-approves-harsher-punishments-for-rock-throwing-2-Nov-2015.aspx> (2 November 2015).

60 *Id.* *Supra* note 26.

61 *Supra* note 60.

to the seriousness of the crime,⁶² and may not violate international standards.⁶³ Imposing such minimum sentences will increase the likelihood of injustice against Palestinians, especially children, in a justice system that is already so heavily stacked against them.⁶⁴

Further, Article 37 (b) of the Convention on the Rights of a Child states that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”⁶⁵ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) specify that any punitive measure taken against a juvenile must be proportional to the gravity of the offense.⁶⁶ Punitive measures must also take into account the juvenile’s personal circumstances including social status, family situation, and the harm caused by the offense.⁶⁷

Last, the freezing of insurance benefits for parents of jailed minors also violates international law, and constitutes an act of collective punishment and a violation of the right to social security. As detailed below, punishment for an offense may only be imposed on the individual convicted of the offense.⁶⁸

62 Various international instruments require that the punishment is commensurate with the gravity of the offense. See e.g. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT, 1465 U.N.T.S. 85, art. 4(2), entered into force 27 June 1987; see also INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE, 2715 U.N.T.S., art. 7, entered into force 23 December 2010.

63 See Amnesty International, *Fair Trial Manual*, Second Edition, Chapter 25, available at <https://www.amnesty.org/en/documents/POL30/002/2014/en/> (9 April 2014). See also Working Group on Arbitrary Detention, U.N. Doc. A/HRC/16/47, page 23 (2012).

64 See e.g. Adalah, Report, *Inequality Report: The Palestinian Arab Minority in Israel*, available at http://www.adalah.org/uploads/oldfiles/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf (2011) (detailing the indirect and direct discrimination against Palestinian citizens of Israel that is ingrained in the Israeli legal system); see also Adalah, *Two Policies for Two Peoples*, available at <http://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/Abeer-Baker-Two-Policies-06-2008.pdf> (June 2008).

65 CONVENTION ON THE RIGHTS OF THE CHILD, U.N. Doc. A/44/4, art. 37(b), entered into force 2 September 1990.

66 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), *Commentary to General Principle 5*, U.N. Doc. A/40/53 (1985).

67 *Id.*

68 Human Rights Committee, *General Comment 29*, U.N. Doc. CCPR/C/21/Rev.1/Add.11, para. 11 (2001); Human Rights Committee, *Concluding Observations: Libya*, U.N. Doc. CCPR/C/LBY/CO/4, para. 20 (2007); UN General Assembly resolution 65/225, North Korea, sec. 1(a)(i).

III. COLLECTIVE PUNISHMENT

Alongside the expansion of police powers, Israel instituted measures that impact the Palestinian community as a whole in East Jerusalem, including the obstruction of movement in and access to Palestinian neighborhoods, punitive home demolitions, the revocation of residency, and economic measures. Collective punishments violate both international humanitarian law and human rights law, as both emphasize the individual nature of punishment. Article 33(1) of the Fourth Geneva Convention affirms, “No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.” Article 75(2)(d) of the First Additional Protocol to the Geneva Conventions, reflective of customary law, confirms that collective punishments are prohibited at any time.⁶⁹

Under international human rights law, collective punishment contradicts principles of due process guarantees and rights to fair trial. The Human Rights Committee has affirmed that even in states of emergency, States parties may not act “in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.”⁷⁰

A. OBSTRUCTION OF MOVEMENT IN AND ACCESS TO PALESTINIAN NEIGHBORHOODS

Israel routinely uses security as a pretext to impose severe access restrictions and limitations on movement throughout Jerusalem; this practice markedly increased in the past few months. On October 4,

69 1977 PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (PROTOCOL I), 1125 U.N.T.S. 3, entered into force 7 December 1978, available at <https://www.icrc.org/ihi/WebART/470-750096>.

70 Human Rights Committee, *General Comment 29*, U.N. Doc CCPR/C/21/Rev.1/Add.11, para. 11 (2001).

Israel issued a 48-hour ban on Palestinians from entering the Old City of Jerusalem, with the exception of residents. Israeli Jewish citizens and tourists, however, retained right of entry. Although there have been previous limitations on Palestinian access to the Old City for Friday prayer, the sweeping ban was unprecedented. A few days later, on 8 October, metal detectors were set up outside of the Old City and at the entrance of some neighborhoods of East Jerusalem.

On 13 October, Israel approved measures authorizing the imposition of closures “on, or to surround, centers of friction and incitement in Jerusalem in accordance with security considerations.”⁷¹ This led to the immediate closure or obstruction of access to Palestinian neighborhoods. Al-Haq [documented](#) the establishment of checkpoints and cement blocks in the neighborhoods of Jabal Al-Mukabber, Silwan, Al-‘Essawiyya, Sur Baher and Ras Al-‘Amoud. The areas of Sheikh Jarrah and Al-Musrara, amongst others, also experienced obstructed access and movement. On 14 October, Al-Haq field researcher documented the obstruction of 33 streets in East Jerusalem, including the complete closure of 15 streets and 18 inspection points. Approximately 33 checkpoints and observation points were also found in the Old City, including 4 with metal detectors. UN-OCHA recorded the disruption of access “by some 140,000 people to services, including educational and health facilities, places of work, and holy sites” because of these barriers.⁷²

Israel [habitually](#) limits movement in and access to Palestinian neighborhoods. Such limitations, compounded by the Annexation Wall, isolate Palestinian East Jerusalemites from each other and from other areas of the West Bank. Fragmentation divides communities and has a deep impact on the social, cultural, economic, and political lives of all Palestinians. Beyond its implications on Palestinian society as a whole, the daily lives and livelihoods of Palestinians also suffer.

71 Israel Ministry of Foreign Affairs, *Security Cabinet approves anti-terror measures*, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Security-Cabinet-approves-anti-terror-measures-13-Oct-2015.aspx> (13 October 2015).

72 OCHA, *Humanitarian Bulletin Monthly Report October 2015*, available at http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_11_10_english.pdf.

Al-Haq documented the testimony of Yousef Adnan Darwish, 44, who explained the impact of the closures during a family emergency.

On 19 October at approximately 9:30pm, I was sitting with my mother, 65-year-old Huda Muhammad Darwish, from Al-'Essawiya, in the yard of her house, when Israeli forces raided the neighborhood and fired tear gas and sound canisters. Several tear gas and sound canisters landed in the yard of the house. As a result, my mother's face turned red, her eyes became teary, she coughed and was unable to breathe. I immediately helped her to go inside the house, and closed the windows and doors. When she looked like she was feeling better, I left her to sleep and rest.

That same night at approximately 3:00am, I received a phone call from my brother Karim, 23, who asked me to come immediately to their house to take our mother, Huda, to the hospital as she was unable to breathe. I arrived shortly after, and found my mother had lost consciousness. We immediately took her to hospital.

I drove towards Hadassah, an Israeli hospital located to the west of Al-'Essawiya. It would normally take two minutes by car to arrive to the hospital. However, I had to take a longer route due to the obstruction of the western entrance of the neighborhood by cement blocks set up by the Israeli authorities on 14 October 2015. Once we arrived to the eastern entrance of the town, there was a long queue of cars waiting to cross the Israeli set up military checkpoint. In the meantime, my mother was lying on the backseat of the car hardly able to breathe.

In order to save time, I decided to pass the cars. Approximately four meters away from the checkpoint, there were about 15 Israeli soldiers and police officers. I stopped there and put my hand out of the window signalling at them. One of the soldiers immediately pointed his gun towards the car then fired two bullets in the air. At that moment, I was trembling and frightened that we would be shot. I shouted that we had an emergency in the car and that I

needed to get my mother to hospital.

The soldiers approached the car at gunpoint and forced Karim and I out of the car. Karim was thoroughly searched on the side of the road, while I begged them to let us go so we could get our mother to the hospital. Approximately half an hour later, one of the officers looked inside the car and saw my mother hardly breathing and let us pass.

It took about 15 minutes to get to the hospital from the checkpoint. At the entrance of the hospital, the security guards stopped my car and checked my ID card even though I had asked them to hurry as my mother's condition had deteriorated. Ten minutes after being admitted to the hospital, Huda was pronounced dead. According to the doctors, she had a heart attack. My mother had tests 2 weeks prior to the incident, which showed that she was in good health...I accuse the Occupying Forces for her death because of the tear gas and the delay at the checkpoint.

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Article 12 of the ICCPR upholds the right to freedom of movement. While restrictions provided for by law may be permitted, the Human Rights Committee has noted that any restrictions on the right must be based on the principle of proportionality.⁷³ Amongst other considerations, proportionality would require “the least intrusive instrument amongst those which might achieve the desired result.”⁷⁴ Further, and central to the case of East Jerusalem, the Human Rights Committee has stressed that any restrictions on movement must be consistent with “the fundamental principles of equality and non-discrimination.”⁷⁵

The aforementioned restrictions have all occurred in Palestinian neighborhoods of East Jerusalem, have not extended to Israeli settlements in East Jerusalem or West Jerusalem, and are representative of Israel's

⁷³ Human Rights Committee, *General Comment 27*, U.N. Doc. CCPR/C/21/Rev.1/Add.9, paras.14-15 (1999).

⁷⁴ *Id.* at para. 14.

⁷⁵ *Id.* at para. 18.

policy of fragmentation. Moreover, as noted above, the 48-hour ban to the Old City in early October did not affect Israeli Jews or tourists. Given the non-individualized and discriminatory nature of the limitations that target entire Palestinian neighborhoods, Israel's restrictions on movement via bans, barriers, checkpoints, and other measures are in violation of its obligations under the ICCPR.

As illustrated by the case of Huda Darwish, restrictions on movement have a severe impact on other rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which is considered the central instrument of protection for the right to health, recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" at Article 12.⁷⁶ Within this right, States parties must assure "equal and timely access to basic preventative, curative, rehabilitative health services,"⁷⁷ and must further refrain "from denying or limiting equal access for all persons."⁷⁸

I. AL-AQSA COMPOUND

As mentioned above, Israel's increased attacks on Al-Aqsa Mosque Compound in East Jerusalem's Old City is considered one igniting factor of the recent unrest. Consequently, the recent closures in East Jerusalem are inextricably connected to Israel's broader objective towards the Compound. Despite Prime Minister Benjamin Netanyahu's claim that Israel is "maintaining the status quo... [and] not violating it,"⁷⁹ the status quo itself has changed into one of routine limitations of access for Palestinians and provocations by settlers and Israeli politicians with the

76 Several other international and regional human rights instruments address the right to health in various ways: The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (art. 5(e) (iv)); The 1979 Convention on the Elimination of all Forms of Discrimination against Women (arts. 11(1)(f), 12, and 14(2)(b)); The 1989 Convention on the Rights of the Child (art. 24); The 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families (arts. 28, 43(e) and 45(c)); The 2006 Convention on the Rights of Persons with Disabilities (art. 25).

77 Committee on Economic, Social, and Cultural Rights, *General Comment 14*, U.N. Doc. E/C.12/2000/4, para. 17 (2000).

78 *Id.* at para. 34

79 *Supra* note 26.

encouragement of the Israeli government.

For the last year and half, Israel has stepped up its restrictions on Palestinian access to the holy site, especially following the brutal burning alive of Palestinian teenager Muhammad Abu Khdeir and Israel's offensive against Gaza in 2014. Israel has imposed arbitrary restrictions on Palestinian access to the holy site, while allowing right-wing Israeli and settler groups to enter. Indeed, Israeli government leaders ranging from the Deputy Foreign Minister Tzipi Hotovely, who was quoted as dreaming "to see the Israeli flag flying over the Temple Mount"⁸⁰ to the Minister of Agriculture, Uri Ariel who is a frequent visitor to the 'Temple Mount,'⁸¹ unabashedly indicate Israel's unlawful plans.

The provocative incursions often result in violence and the excessive use of force by Israeli police against Palestinian worshippers seeking to protect Al-Aqsa as a Muslim place of worship. Israel has also continually imposed gender and aged based-restrictions on individuals entering the Compound. The repeated incursions and restrictions, the actions and statements of Israeli leaders, and Israel's "[Hebron template](#),"⁸² all put a justifiable fear in Palestinians that Israel is attempting to assert its control over the Compound with the intent of eventually seizing it in its entirety and dividing Al-Aqsa.

Recent incidents monitored by Al-Haq include:

- *September 21*: 150 settlers stormed the Al-Aqsa Mosque Compound with IOF cover, while the IOF prohibited men under the age of 50 from entering.

80 Jonathan Lis, *Israeli Deputy Foreign Minister: I Dream of Israeli Flag on Temple Mount*, 26 October 2015, HAARETZ, available at <http://www.haaretz.com/israel-news/.premium-1.682462>.

81 See: <https://www.youtube.com/watch?v=qEqQyy9os>, <http://www.inn.co.il/News/News.aspx/307807>.

82 Given the precedent set by Israel in Hebron following the Ibrahimi Mosque massacre, Palestinians in East Jerusalem have a justified fear of Israel's prospective actions. In 1994, a US-born Jewish settler killed 29 Palestinians during prayer at the Ibrahimi Mosque. After the massacre, Israel took control of the Ibrahimi Mosque and divided it into Jewish and Muslim quarters, reserved certain roads for Jewish settlers while displacing Palestinian residents in the area, and eventually exercised and continues to have exclusive control over Hebron's Old City.

- *September 22*: Tens of settlers stormed the Al-Aqsa Mosque and the IOF closed the majority of the doors that lead to the Al-Aqsa Mosque Compound, prohibiting men under 40 from entry. This caused several worshippers to be forced to pray outside the doors of the Compound.
- *September 27*: After days of government-backed settler incursions into the Compound restricting Palestinian access, clashes erupted between Palestinian worshippers and the IOF. The IOF stormed the mosque and its surrounding areas and used tear gas and rubber bullets to disperse Palestinian protestors.
- *October 3*: The IOF stormed the Al-Aqsa Mosque and forced all of the worshippers outside of the mosque, many of whom were present to protect against expected settler attacks and break-ins. The IOF arrested two young men and attacked and severely beat eleven.
- *October 9*: Hundreds of Palestinians were forced to perform Friday prayers in the streets of Jerusalem, including in the Old City, as a result of the IOF's prohibition of men under the age of 50 from entering the Al-Aqsa Mosque Compound. The IOF blocked three doors that lead to the Compound and placed metal detectors at the remaining doors that were open. The IOF checked the IDs of all those who entered and searched female worshippers' handbags. The IOF were stationed across the streets of East Jerusalem. Drones were witnessed flying above East Jerusalem neighborhoods to monitor and photograph Palestinian movement.
- *October 16*: During the hours of Morning Prayer, the IOF blocked the doors to the Old City, prohibiting men under the age of 40 from entry. The men were forced to perform Friday prayers in the streets of East Jerusalem outside the gates of the Old City.

Settler incursions into the Compound have continued throughout the month of October into November.⁸³ Reports state that one settler group

⁸³ See *Jewish Settlers, Rabbis Storm Jerusalem's al-Aqsa Mosque*, Wafa Palestinian News & Info Agency, 25 November 2015, available at <http://english.wafa.ps/index.php?action=detail&id=29962>. See also, *Settlers Resume Provocative Visits to al-Aqsa*, IMEMC, 2 November 2015, available at <http://www.imemc.org/article/73670>.

has begun offering 2,000 shekel rewards for Jews that are arrested after praying in the Compound.⁸⁴

Since Israel illegally annexed East Jerusalem in 1967, the Compound remains under Jordanian “guardianship” although Israel has effective control over it. The aforementioned Israeli actions surrounding the Compound undoubtedly contradict the Prime Minister’s claim of preserving such a status quo, while other statements affirming “Only Israel, Israel alone, is the guarantor of the holy sites on the Temple Mount,”⁸⁵ highlight Israel’s broader policy aim of deepening its control over Jerusalem.

Al-Haq has repeatedly [called](#) for action by the international community against Israel’s policy on East Jerusalem generally, and the Al-Aqsa Compound in particular. Israeli restrictions, prohibitions, and attacks on Palestinian worshippers all constitute unlawful collective punishment and are in clear violation of Palestinians’ right to freedom of religion, including access to holy sites.⁸⁶ Israel’s violations also bar Palestinians from exercising their right to freedom of worship which is affirmed in Article 18 (1) of the ICCPR as the “freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”⁸⁷ According to Article 18(3) of the ICCPR, the right to freedom of worship can only be subjected to “such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”⁸⁸ Israeli policies, which restrict and prohibit Palestinian access to the Compound, do not meet this legal requirement

84 Shlomo Pitrikovsky, *Group to pay Jews to pray on Temple Mount- and get arrested*, Arutz Sheva 7-Israel National News, 28 October 2015, available at <http://www.israelnationalnews.com/News/News.aspx/202561>.

See also *Palestinian MK visits Aqsa, settlers attempt prayers at compound*, Ma’an News Agency, 28 October 2015, available at <http://www.maannews.com/Content.aspx?id=768526>.

85 Israel Ministry of Foreign Affairs, *PM Netanyahu’s remarks at the start of the weekly Cabinet Meeting*, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/PM-Netanyahu's-remarks-at-the-start-of-the-weekly-Cabinet-Meeting-18-October-2015.aspx> (18 October 2015).

86 *Universal Declaration of Human Rights*, U.N. Doc. A/810 at 71 (1948).

87 *Supra* note 43 at art. 18(1).

88 *Id.* at art. 18(3).

as they are applied discriminatorily, violating Palestinian rights. The Fourth Geneva Convention also upholds that “protected persons are entitled, in all circumstances, to respect for their...religious convictions and practices.”⁸⁹ This is similarly affirmed under customary international humanitarian law.⁹⁰

B. PUNITIVE HOUSE DEMOLITIONS

Israel has long-practiced the illegal, arbitrary policy of punitive house demolitions.⁹¹ Measures outlined in October, which permit the demolition of a suspect’s home, prohibit any “new construction” on the site, and permit the confiscation of the suspect’s property, only deepen and elucidate Israeli aims. Taken together, these measures will lead to the confiscation or effective confiscation of homes and property, which will undoubtedly burden the relatives and neighbors of suspects.

Since the beginning of 2015 until 1 December 2015, there have been four punitive house demolitions in East Jerusalem. On July 1, 2015, the IOF destroyed and sealed the home of ‘Odai Abu Jamal in Jabal Al-Mukabbar in East Jerusalem.⁹² ‘Odai had been killed on 18 November 2014 after allegedly carrying out an attack in a synagogue that day. The IOF went to Udai’s family home on 1 July 2015 at 3:00am, and gave the family seven minutes to evacuate with their belongings. The IOF then poured cement into the home and sealed the windows. Six individuals, including one child, were left homeless.

‘Odai carried out the attack with his cousin, Ghassan Abu Jamal, who was also killed at the scene on 18 November 2014. Following the recent escalation of violence, the IOF punitively demolished the home

89 GENEVA CONVENTION IV, 75 U.N.T.S. 287, art. 27, entered into force 21 October 1950.

90 *Supra* note 41 at rule 104.

91 See e.g., Al-Haq, Report, *Israel’s Punitive House Demolition Policy: Collective Punishment in Violation of International Law*, available at <http://www.alhaq.org/publications/publications-index/item/israel-s-punitive-house-demolition-policy> (2003); see also, Al-Haq, *Demolition and Sealing of Houses as a Punitive Measure in the Israeli-occupied West Bank*, available at <http://www.alhaq.org/publications/publications-index/item/demolition-and-sealing-of-houses-as-a-punitive-measure-in-the-israeli-occupied-west-bank> (1987).

92 Al-Haq Monitoring & Documentation Department.

of Ghassan, along with the homes of Muhammad Ja'abes' and Mutaz Hijazi, on October 6 in East Jerusalem. Notably, Muhammad and Mutaz, like Ghassan, were also killed by the IOF in 2014 after allegedly carrying out attacks. Accordingly, the demolition of the three houses in 2015 only served to displace and collectively punish ten innocent family members.

The Israeli human rights organization HaMoked: Center for the Defence of the Individual has reported on a new demolition order in Jabal Al-Mukabbar, East Jerusalem for the family home of Alaa Abu Jamal.⁹³ Alaa carried out an attack on 13 October 2015, days after the home of his relative Ghassan was punitively demolished. HaMoked also noted that the Israeli Occupying Forces surveyed 14 homes in East Jerusalem, belonging to individuals that are suspected of attacks occurring in September and October 2015.⁹⁴

While the HCJ has recognized that “seizure and demolition or sealing of residential homes severely violates the fundamental rights of the uninvolved inhabitants of said houses,”⁹⁵ it argued that such violations do “not prevent the military commander” from exercising such authority.⁹⁶ Recently, the HCJ extended the policy of collective punishment even further by ruling that a house rented by a suspect could also be demolished.⁹⁷ The owner of the house would be given a 5-day warning to evacuate the family of the accused (i.e. the tenants), and if individuals do not leave, the house would be demolished.

As previously [reported](#) by Al-Haq, the HCJ habitually misconstrues international law in order to approve the illegal policies of the Israeli

93 HaMoked: Center for the Defense of the Individual (HaMoked), *Interim summary regarding punitive house demolitions 28.10.2015*, available at <http://www.hamoked.org/Document.aspx?dID=Updates1586> (28 October 2015).

94 *Id.*

95 HCJ 5290/14, 5295/14, 5300/14, *Qawasmeh et al. v. Military Commander of the West Bank Area*, Judgment, para. 21, 7 August 2014. Unofficial translation available at http://www.hamoked.org/files/2014/1158616_eng.pdf.

96 *Id.* at para. 24.

97 HCJ 7040/15, *Hammad and others v. IDF commander of the West Bank & others*, Decision by Chief Justice Miriam Naor.

government. Under international humanitarian law, the destruction and appropriation of property not absolutely necessary for military operations is prohibited.⁹⁸ Further, the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is considered a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court. Private property is especially protected and may not be confiscated.⁹⁹

Human rights treaties also uphold the right to an adequate standard of living, including adequate housing,¹⁰⁰ and that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home.”¹⁰¹ Given its broad impact, the practice of punitive home demolitions may be considered a form of cruel, inhuman, or degrading treatment or punishment, in addition to being a form of collective punishment.

C. REVOCATION OF PERMANENT RESIDENCY RIGHTS

The October measures also included the step of revoking permanent residency rights of “terrorists.”¹⁰² As with the other sweeping measures, the impact of revoking the Jerusalem residency of a suspect will undoubtedly have broader consequences. Israeli leaders have also threatened the revocation of residency for family members of suspects.¹⁰³

98 See *supra* note 89 at art. 53.

99 See Hague Regulations, art. 46, *entered into force* 18 October 1907.

100 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 993 U.N.T.S. 3, art. 11, *entered into force* 3 January 1976.

101 *Supra* note 48 at art. 18.

102 Israel Ministry of Foreign Affairs, *Security Cabinet approves anti-terror measures*, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Security-Cabinet-approves-anti-terror-measures-13-Oct-2015.aspx> (13 October 2015).

103 An Israeli defense official reportedly stated that families of suspects would be “deported” to Gaza, while the Minister of Justice stated that the Jerusalem IDs and social security of suspects’ families would be cancelled. See *If violence continues, Israel to begin banishing Palestinians to Gaza*, THE JERUSALEM POST, 16 October 2015, available at <http://www.jpost.com/Arab-Israeli-Conflict/If-violence-continues-Israel-to-begin-banishing-Palestinians-to-Gaza-426195>. See also Patrick Strickland, *Israel to revoke Jerusalem residency of Palestinians*, ALJazeera, 16 October 2015, available at <http://www.aljazeera.com/news/2015/10/israel-revoke-jerusalem-residency-palestinians-151015125531507.html>.

As mentioned above, the home of Ghassan Abu Jamal was demolished on October 6, 2015, although he was killed in November 2014. Ghassan had permanent residency status in East Jerusalem, and his wife Nadia, who had a West Bank ID, received family unification which she had to renew annually. Their three children had permanent residency status. Immediately following Ghassan's death, Nadia learned through the media that her family unification was revoked,¹⁰⁴ and that the national medical insurance of her children was denied.¹⁰⁵ On 22 July 2015, the Israeli High Court of Justice issued its judgment upholding the Minister of Interior's decision to not grant Nadia a stay permit, with her expulsion effective October 1, 2015.¹⁰⁶ The Court appeared to leave open the question of the children's medical insurance.¹⁰⁷ Nadia's case highlights the broader impact of the October measures on families, and the Palestinian population as a whole, in East Jerusalem.

In addition to the revocation of IDs under the 13 October measures, Israeli media reported on 25 October, that Netanyahu "raised the possibility of revoking the Israeli residency of some East Jerusalem Palestinians" who live beyond the Annexation Wall.¹⁰⁸ Currently, there are at least 100,000 Palestinians living in areas such as Kufr 'Aqab, 'Anata, Semiramis, and Shu'fat refugee camp, which are part of East Jerusalem, but beyond the Wall.

The purposeful separation of these neighborhoods and the real and

104 See HaMoked, *Urgent Motion for Interim Injunction Precluding Removal from Israel*, para. 3, available at http://www.hamoked.org/files/2014/1159010_eng.pdf (30 November 2014).

105 *Id.* at para. 7

106 HCJ 8134/14, Judgment, Session 22 July 2015, available at http://www.hamoked.org/files/2015/1159417_eng.pdf.

107 "We shall add on our part, that there is room for flexibility on the part of the respondents in connection with the mother's entry for the purpose of accompanying the children for visits or medical treatments; and despite the fact that we do not express now an opinion concerning the interpretation of the question of who can lawfully initiate the renewal of petitioner 1's application, and concerning issues pertaining to the children's medical insurance under the circumstances – it may be fairly assumed that the respondents will consider the matter willingly as may be required, according to their statement. It was agreed that the petitioner would not be expelled until October 1, 2015." *Id.*

108 Barak Ravid, *Netanyahu Mulls Revoking Residency of Palestinians Beyond E. Jerusalem Separation Barrier*, HAARETZ, 25 October 2015, available at <http://www.haaretz.com/israel-news/premium-1.682276?date=1445848561585>.

potential impact of the Wall impend on Palestinian residents there. First, as confirmed by a recent court judgment, the Jerusalem municipality historically neglects these neighborhoods.¹⁰⁹ Further, it was evident from the start of Israel's construction of the Wall in 2002, that the Wall's path did not follow the Green Line and that Israel's aim was to fortify its illegal annexation and transfer more Palestinians from East Jerusalem. Accordingly, less densely Palestinian-populated areas were included within the Wall, while more concentrated Palestinian neighborhoods were pushed beyond the Wall. In 2010, Al-Haq noted its concern that "at any time, Israel can unilaterally re-draw the city's municipal boundaries along the route of the Wall and exclude these areas from Jerusalem. Any Palestinian Jerusalemite who has moved to these zones and is found to have consistently used Israeli government services located there over a prolonged period of time will be at serious risk of losing their Israeli-granted right to reside in East Jerusalem."¹¹⁰ Any proposed redrawing of administrative boundaries would be in violation of Article 43 of the Hague Regulations and Article 47 of the Fourth Geneva Convention.

Revoking the permanent residency rights of suspects, and the proposed revocation of residency rights of individuals living in Jerusalem but beyond the Annexation Wall, will result in individuals becoming stateless. Prohibitions against statelessness are provided for under international human rights law and customary international law.¹¹¹ Moreover, such revocations would not only devastate an individual's economic, social, and cultural life, but would have a severe impact on Palestinian society as a whole.

Accordingly, these revocations should be examined under Israel's broader

109 Nir Hasson, *Court: Jerusalem Municipality Neglected Palestinian Neighborhood of Kafr Aqab*, HAARETZ, 27 October 2015, available at <http://www.haaretz.com/israel-news/premium-1.682518>.

110 Al-Haq, Report, *The Jerusalem Trap*, at page 8, available at <http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap> (2010).

111 Article 15 of the Universal Declaration of Human Rights affirms "1) Everyone has the right to a nationality. 2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." See also CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS, 360 U.N.T.S. 117, arts. 7 and 8, entered into force June 6, 1960.

aim to Judaize East Jerusalem.¹¹² Since 1967, over 14,000 Palestinians have lost their permanent residency status, including as a result of Israel's "center of life policy."¹¹³ In its last periodic review, the Human Rights Committee raised its concern "at the treatment of Palestinians in East Jerusalem as aliens and the insecurity of their permanent residency status that can be revoked if they live outside the municipal boundary of Jerusalem."¹¹⁴ Article 12(1) of the ICCPR affirms "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

D. ECONOMIC MEASURES

Israel has historically used economic pressure on Palestinians, ranging from increases in fines to conditions that more largely place the burden on consumers.¹¹⁵ Such actions are continually used in Jerusalem, and have intensified since September 2015.

In September 2015, Israeli media reported that police in Jerusalem planned to increase pressure on the Palestinian population in conjunction with various government agencies.¹¹⁶ Regulatory and administrative bodies, ranging from traffic police to municipal inspectors that enforce business and construction licenses, would be increased.¹¹⁷

An Al-Haq field researcher documented the economic impact of Israel's measures on merchants in the Old City beginning on 3 October. One

112 This can also be seen within other initiatives such as the 2014 Jewish Nation-state Bill. See Hassan Jabareen, *The Real Debate Over Israel's 'Jewish Nation-State' Bill*, THE NATION, 29 January 2015, available at <http://www.thenation.com/article/real-debate-over-israels-jewish-nation-state-bill/>.

113 As noted, under the "center of life" policy, Palestinians from East Jerusalem may lose their permanent residency status if they do not prove that Jerusalem is the "center" of their life through the provision of documentary evidence, including utility bills, rental contracts, etc. For additional information, see *supra* note 110.

114 *Supra* note 58 at para. 18.

115 See e.g. Al-Haq, Report, *Israel's Retaliatory Seizure of Tax: A War Crime to Punish Palestinian ICC Membership*, available at <http://www.alhaq.org/publications/publications-index/item/the-unlawful-seizure-of-palestinian-taxes-israel-s-collective-punishment-of-a-people> (2015).

116 HAARETZ, 16 September 2015, <http://www.haaretz.co.il/news/politics/1.2732329>.

117 *Id.*

café owner described to an Al-Haq field researcher how his business has suffered. He stated that on 3 October, following an incident in the Old City, the IOF stormed his café, examined the IDs of all of his customers, and ordered him to close within five minutes. The café owner only attempted to open again three days later, and was shocked to find tens of settlers sitting on and blocking Al-Wad street, where his café is located, as part of the funeral for a settler. He was advised by soldiers to only reopen his cafe ten days later- when the funeral had ended.

The café owner also described increased harassment by the municipality. While his café was empty, municipal employees entered and after seeing ashtrays and arguiles on tables, told him that smoking in public places was prohibited. Although he noted that the prohibition had not been implemented in the three years since its passing, he was given a 5,000 shekel fine (approximately 1,300 USD). He was told he would receive another fine if the arguiles and ashtrays were not removed upon a future visit. The café owner emphasized the impact of Israel's actions on his livelihood, noting that he already paid 70,000 shekels (approximately 18,029 USD) annually in taxes that he usually requires loans to cover.

Al-Haq field researcher further reported on 23 October that 54 stores had been closed since 3 October in Souq Al-Qattanin in the Old City. While some stores would open for a few hours a day, individuals stated that they chose not to open due to the lack of customers.

Under the Covenant on Economic Social and Cultural Rights, the right to work is guaranteed and includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” and that States parties “will take appropriate steps to safeguard this right.”¹¹⁸ Article 52 of the Fourth Geneva Convention also prohibits “measures aiming at creating unemployment or at restricting the opportunities offered to workers.”¹¹⁹

118 *Supra* note 100 at art. 6.

119 *Supra* note 89 at art. 52. The Commentary to Article 52 notes that the “paragraph refers in particular to certain measures, taken during the Second World War, which had the effect of creating unemployment artificially or of lessening the possibility of finding work; such measures included the setting up of employment monopolies, the closing down of industries, the creation of a shortage of raw materials necessary for production, etc.”

IV. ATTACKS ON HOSPITALS

Hospitals and health facilities have also been [repeatedly targeted](#) by Israel during the months of October and November, including Al-Makassed Hospital in East Jerusalem.¹²⁰ On 27 and 28 October, the IOF stormed Al-Makassed demanding that the staff turnover medical files of Palestinians treated after the recent clashes. Armed forces were deployed throughout the hospital, harassing the staff and demanding medical files. The staff refused to comply with the IOF demand for files or information.¹²¹ While at the hospital, the IOF confiscated the hospital's computer that holds footage from the surveillance cameras. The IOF also registered the names and phone numbers of several staff members at the hospital and threatened to summon them for interrogations. Hospital staff planned a sit-in protest in front of the hospital against the IOF's actions for 29 October. During the protest, the IOF raided the hospital for the third time, and shot tear gas, stun grenades and rubber-coated bullets at the protestors.¹²² Dozens of people suffered from tear gas inhalation, and a nurse and patient were reportedly injured with rubber-coated bullets.¹²³

The IOF also raided Al-Makassed Hospital on 9 November and searched for the medical folder of a boy who had been arrested recently.¹²⁴ IOF spread throughout the front entrance, while others went inside the administration and emergency building. Although the IOF reportedly had a court order to enter the hospital, its actions are in violation of its duties as Occupying Power.

Attacking a hospital without military necessity is in contravention of

120 See Al-Haq, *Undercover Israeli Military Forces Raid Hospital in Hebron, Kill One Palestinian and Arrest Another*, available at <http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/992-undercover-israeli-military-forces-raid-hospital-in-hebron-kill-one-palestinian-and-arrest-another> (18 November 2015).

121 *Hospital refuses Israeli demand for Palestinian medical records*, Ma'an News Agency, 29 October 2015, available at <https://www.maannews.com/Content.aspx?id=768541>.

122 *Israeli forces shoot rubber-bullets, tear gas at Jerusalem hospital*, Ma'an News Agency, 29 October 2015, available at <http://www.maannews.com/Content.aspx?id=768551>.

123 *Id.*

124 *Israeli Special Forces Storm Al-Makassed Hospital in Jerusalem*, Ma'an News Agency, 9 November 2015, available at <https://maannews.net/Content.aspx?id=808281>.



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the Fourth Geneva Convention. Article 18 of the Convention states that “civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.” Hospitals maintain this protection unless used “outside their humanitarian duties and acts harmful to the enemy”. There is no indication that Al-Makassed lost its protective status; accordingly, Israel’s targeting of the hospital is a serious violation of humanitarian law.

V. CONCLUSION

These recent Israeli measures and actions must be considered as part and parcel of Israeli policy towards East Jerusalem since 1967. Israel has created a situation of domination and control over Palestinian lives and territory in East Jerusalem that ensures that residents remain at risk both individually and collectively.¹²⁵

Israel's actions towards Palestinians in East Jerusalem are widespread and systematic, and part of a larger policy of persecution in violation of international criminal law. Persecution, as a crime against humanity, is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."¹²⁶ A group may be identified based on "political, racial, national, ethnic, cultural, religious, gender, or other grounds."¹²⁷

Israeli legislation and practices solely target Palestinians and lead to violations of the right to life, liberty, health, security of person, freedom of movement, and freedom of expression, amongst other political, civil, economic, social and cultural rights. Moreover, Israeli policies in East Jerusalem ensure that Palestinian neighborhoods are underserved, isolated, and under threat. These practices, and the resulting hardship placed on Palestinians, aim at reinforcing Israel's illegal annexation of East Jerusalem and the direct and indirect forcible transfer of Palestinians

125 One individual's actions can have repercussions, not only on themselves, but on their family and their community. As mentioned above, parents of a child who throws stones may lose their social security benefits. Family members of an individual accused of an attack, who has a high probability of being killed on the spot rather than being controlled and given a fair trial, can be displaced from their home. More broadly, even when not under threat of punitive action, Palestinians in East Jerusalem are persistently subjected to discriminatory practices and state policies aimed at transferring them from East Jerusalem.

126 ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, 2187 U.N.T.S. 3, art. 7(2)(g) *entered into force* 1 July 2002.

127 *Id.* at art. (7)(1)(h).

from there.¹²⁸ While not the focus of the paper, one should concurrently consider Israeli government actions that ensure the continued transfer of Israeli settlers into East Jerusalem, and steps taken to fortify its settlement enterprise there. Taken together, they form one policy of persecution.

In light of Israel's historic and ongoing policy towards Palestinians in East Jerusalem, third states are under the obligation to act. Under Article 41 of the Draft Article on the Responsibility of States for Internationally Wrongful Acts, which is reflective of customary international law, affirms that "States shall cooperate to bring to an end through lawful means any serious breach" of peremptory norms of general international law.¹²⁹ Accordingly, states must not "recognize a situation created by a serious breach" as lawful, "nor render aid or assistance in maintaining that situation." Crimes against humanity, including persecution, are considered a peremptory norm of international law.¹³⁰ Further, High Contracting to the Geneva Conventions also have a duty under Common Article 1 "to respect and ensure respect" for the Conventions.¹³¹

Historically, there has been and continues to be no gray area or uncertainty regarding Israel's policy and intention towards East Jerusalem and its residents. Indeed, Israeli leaders regularly reinforce their actions through statements, including that "We will forever keep Jerusalem united under Israeli sovereignty."¹³² Former Foreign Minister Avigdor Lieberman has also noted Israel's historic and continuing intent, noting "I stand before you in Jerusalem, and confirm Begin's words: the city will remain our

128 Forcible transfer is a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute.

129 Report of the International Law Commission on the work of its fifty-third session,

130 Cherif Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, LAW AND CONTEMPORARY PROBLEMS, Volume 59, Number 4, page 267 available at <http://www.sos-attentats.org/publications/bassiouni.jus.cogens.pdf>.

131 Pertinent to East Jerusalem are articles under the Fourth Geneva Convention relating to forcible transfer (article 49), prohibitions on collective punishment (article 33(1)), respect for religious convictions and practices (article 27), and destruction of property (article 53), amongst others.

132 Elhanan Miller, *Palestinians fume over Netanyahu's 'united Jerusalem' statement*, TIMES OF ISRAEL, 19 May 2015, available at http://www.timesofisrael.com/palestinians-fume-over-netanyahus-united-jerusalem-statement/?fb_comment_id=892223680848051_892261717510914#f792be58.



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capital and will never be divided.”¹³³ Recent measures taken by Israel use ‘security considerations’ as a pretext to expedite its aims there. Any perceived calm in East Jerusalem as compared to the rest of the Occupied Palestinian Territory should only bring attention to the persecution, suppression, and plight of Palestinians there.

133 Barak Ravid, *Lieberman: Jerusalem is Our Eternal Capital, It Will Never be Divided*, HAARETZ, 20 April 2010, available at <http://www.haaretz.com/news/lieberman-jerusalem-is-our-eternal-capital-it-will-never-be-divided-1.284574>.