



Legal Q&A: Palestinian residents of occupied East Jerusalem at risk of forcible transfer

The inauguration of the US embassy in Jerusalem last month cast the spotlight on the ongoing occupation and illegal annexation of East Jerusalem by Israel.

The unlawful annexation of occupied East Jerusalem by Israel in 1980 violated one of the most fundamental norms of international law and accordingly has not been recognised by the international community. The Trump US administration's extraordinary decision in December 2017 to relocate the US embassy to Jerusalem strongly undermined the international consensus on this issue.

Against this context, this Q&A aims to highlight the very fragile human rights situation for Palestinians in occupied East Jerusalem. Many are at risk of forcible transfer from the practices and policies of the occupying power that include demolitions, settler evictions and revocation of residency. As noted by UN agencies, a failure to address the factors creating a coercive environment for the Palestinian residents of occupied East Jerusalem, risks undermining their long-term presence there.

What is forcible transfer and how does it relate to Palestinian residents in occupied East Jerusalem?

International humanitarian law prohibits the individual or mass forcible transfer or deportation of the population of an occupied territory, irrespective of motive.¹ Furthermore, prohibited forcible transfer amounts to a grave breach of the Fourth Geneva Convention and therefore constitutes a war crime.

Forcible transfer does not necessarily require the use of physical force by the authorities but can, in fact, be triggered by specific factors amounting to the creation of a coercive environment which gives individuals or communities no choice but to leave. Any transfer without the genuine and fully informed consent of those affected is considered forcible under international criminal law.

The practices and policies of Israeli authorities in occupied East Jerusalem are increasingly resulting in the marginalisation of Palestinians living there and, for some, placing them at risk of forcible transfer. These measures include, amongst others, **discriminatory planning and zoning**

¹ Fourth Geneva Convention, Article 49.



policies; home demolitions and forced evictions; collective punishment; a constrictive residency permit regime and limited access to services. They will be looked at in turn below to form the rest of this Q&A.

How does discriminatory planning and zoning policies in occupied East Jerusalem relate to the risk of forcible transfer for Palestinian residents?

According to the United Nations, around 320,000 Palestinians currently reside in occupied East Jerusalem, in addition to 212,000 Israeli settlers who reside in the settlements which have been constructed and expanded since 1967, contrary to international law.

Divergent municipal planning practices between Palestinians and Israeli settlers in East Jerusalem have given rise to a planning regime that is discriminatory and accordingly fundamentally incompatible with requirements of international law. Israeli authorities have restricted Palestinian residential constructions to only 13% of East Jerusalem, most of which is already built up. On the other hand, 35% of the land in occupied East Jerusalem has been confiscated for Israeli settlement use which is illegal under international law and occurs at the expense of land and resources for Palestinian construction and development.

Where construction is permitted, Palestinians face a prohibitive application process for building permits which includes the imposition of high costs, the difficulties of proving proof of land ownership, and the criteria of requisite access roads and infrastructure that is so often lacking in Palestinian neighbourhoods.

The process in itself can take several years with very little guarantee of success. According to the Israeli NGO Binkom, there are approximately 32,000 legal housing units for the 323,700 Palestinians in Jerusalem, as a result of the Jerusalem municipality having issued only 5,000 construction permits since 1967 and only built little public housing for Palestinians.

Such severe constraints have resulted in over a third of Palestinian homes in occupied East Jerusalem being built without the required permit thereby making them subject to demolition orders and the risk of forcible displacement, potentially placing over 100,000 Palestinian residents at risk of displacement.

How does home demolitions in occupied East Jerusalem relate to the risk of forcible transfer for Palestinian residents?

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), between November 2016 and October 2017 alone, 157 demolitions were recorded in occupied East Jerusalem, resulting in the forcible displacement of 241 people including 138 children.



Demolitions of Palestinian homes carried out by Israeli authorities as a result of discriminatory planning or for punitive purposes are unlawful under international law in so far as they lead to forced evictions.

The destruction and confiscation of private property in itself also amounts to a breach of international humanitarian law under the Hague Regulations and Geneva Convention.² Where the extensive destruction and appropriation of property is not justified by military necessity and carried out unlawfully and wantonly, it amounts to a grave breach of the Fourth Geneva Convention and thereby constitutes a war crime.³

Forced evictions resulting from demolitions are a violation of human rights, including the rights to adequate housing, water, sanitation, health and education. The most direct impact of house demolitions is homelessness, in violation of the right to adequate housing as protected by article 11 of the International Covenant on Economic, Social and Cultural Rights. Demolitions generally have a disproportionate impact on women, who are often the primary caregivers for extended families and manage household livelihoods.

The collective punishment of Palestinians has been highlighted by the UN in connection with punitive home demolitions in East Jerusalem. In March 2017 the family home of Fadi al Qumbar, who killed four Israeli soldiers, was punitively sealed leading to the forcible eviction of his wife and four children. Punitive home demolitions are recognised as unlawful under international law.

Furthermore, some 240 households in al Qumbar's East Jerusalem neighbourhood of Jabal Al Mukkaber subsequently received notices of planning or zoning violations, exposing them to the risk of demolition of their home and forcible transfer. The acts by Israeli authorities of punitively demolishing the family home of Fadi al Qumbar and distributing eviction notices to families in his neighbourhood, appears to amount to collective punishment, which is expressly prohibited by international humanitarian law and has a negative impact on several human rights.

How does forced evictions in occupied East Jerusalem relate to the risk of forcible transfer for Palestinian residents?

Several areas in occupied East Jerusalem have been targeted for settlement activities resulting in the eviction and forced displacement of a number of Palestinians families.⁴ As of 1 November 2016 eviction cases had been filed against at least 180 families in East Jerusalem, mainly in

² Hague Regulations, Article 46; the Fourth Geneva Convention, Articles 53 and 56.

³ Statute of the ICC, Article 8(2)(9)(iv); for more on the ICC's preliminary examinations into activities in OPT see [here](#).



Sheikh Jarrah, Silwan, the Old City and Beit Safafa.⁵ As a result, at least 818 individuals, including 372 children, are at risk of forced displacement.

A large proportion of these cases have been initiated by settler organisations filing lawsuits based on claims of previous Jewish ownership or challenging the “protected tenant” status of some families. These settler claims have been buttressed by legislative initiatives which prioritise the claims and rights of Israelis over those of Palestinians. In particular, a series of laws enacted by Israel since 1948, when read in conjunction with one other, allow Israeli Jews to claim ownership rights to properties on the basis of pre-1948 Jewish ownership. Palestinians, however, are not granted any reciprocal right.

Since the early 1970s, the Palestinian refugee community in Sheikh Jarrah has been the target of forced evictions raised in Israeli courts by settler organizations that claim pre- 1948 ownership. As of 1 November 2016, 66 families were facing eviction proceedings.⁶ On 5 September 2017, the Shamasneh family (eight members, including a child) was forcibly evicted from its home in Sheikh Jarrah, which was handed over to Israeli settlers; the first eviction in the neighbourhood in eight years. EU diplomatic missions issued a [joint statement](#) 'strongly condemning' the forced eviction of the Shamasneh family. Although the family had lived in the house since 1964, it had become the subject of eviction proceedings after the house was transferred to settlers claiming to represent the original owners.

According to the UN Office for the Coordination of Humanitarian Affairs, the majority of families whose homes were demolished in East Jerusalem between 2012 and 2016 stayed in the same community; 20 per cent of the families moved from the East Jerusalem side of the wall to the other side; of these, 65 per cent moved to Jerusalem municipality areas, while the rest moved to other parts of the West Bank. Palestinian residents of East Jerusalem who relocate outside the municipality of Jerusalem risk the definitive loss of their East Jerusalem residency, which is afforded on the condition that the centre of their life is effectively there (see below).

All cases of evictions due to house demolition that are the direct consequence of the implementation by Israel of a discriminatory planning and zoning regime in occupied East Jerusalem may also amount to prohibited forcible transfer.

4 Office for the Coordination of Humanitarian Affairs, “Significant increase in risk of displacement in East Jerusalem”. *Monthly Humanitarian Bulletin*, August 2017.

5 https://www.ochaopt.org/sites/default/files/evictions_community_sum_ej_2016_final_1_11_2016.pdf

6 *Ibid.*



How does the residency permit regime in occupied East Jerusalem relate to the risk of forcible transfer for Palestinian residents?

The strict residency regime for Palestinians in occupied East Jerusalem is another factor contributing to a coercive environment for them. Whilst Palestinians based in occupied East Jerusalem are technically eligible for Israeli citizenship⁷, on principle the majority tend to opt instead for permanent residency, which is open to revocation. Increasingly stringent requirements have been imposed on Palestinians in order for them to retain their residency status such as, since 1995, continuously providing proof that Jerusalem is the “centre of their life”. If they lose their residency status, Palestinians have no legal status to reside in Jerusalem, effectively becoming stateless and risking displacement to the West Bank. Since 1967 more than 14,000 residents of Jerusalem have had their residency status revoked by the Israeli authorities.⁸

The deliberate constraints placed on Palestinian access to residency in Jerusalem represent a clear violation of the right to liberty of movement and freedom to choose residence⁹ as well as impacting profoundly on the exercise of fundamental economic, cultural and social rights such as the rights to work, to health and to education.

How does discrimination in access to services in occupied East Jerusalem relate to the risk of forcible transfer for Palestinian residents?

The discrimination faced by Palestinians in occupied East Jerusalem has become pervasive and contributes to creating a coercive environment. It includes discriminatory access to essential services including health care, welfare services, educational facilities and basic infrastructure. Despite claims from municipal officials to the contrary, it appears that only a very limited proportion of the Jerusalem municipality budget – 8 to 10% - is allocated to Palestinians in East Jerusalem, despite the fact that they account for 37% of the city’s population.¹⁰

More than 70% of Palestinians in East Jerusalem live below the poverty line, with those located beyond the illegal separation barrier enduring some of the worst conditions. An Israeli local

7 Although reports reveal that the procedure is often arduous with limited likelihood of success in spite of a legislative framework entitling Palestinians to citizenship. See <https://www.haaretz.com/middle-east-news/palestinians/the-clause-that-grants-israeli-citizenship-to-thousands-of-palestinians-1.5626939>

8 <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>

9 ICCPR, Art. 12

10 See http://www.ir-amim.org.il/sites/default/files/PL_Investment%20in%20East%20Jerusalem%20December%202014-2%2025%2015.pdf.



government audit found that some 140,000 residents live in the eight Palestinian neighbourhoods that lie within the Jerusalem municipality border defined by the Israeli authorities, but in areas separated from the rest of East Jerusalem by the illegal separation barrier that cuts across it¹¹. These neighbourhoods severely lack basic infrastructure, municipal services and law enforcement, and suffer from poor living conditions, although the communities themselves are under the authority of the municipality of Jerusalem and pay municipal taxes. A decision by the Government of Israel of 28 May 2017 to allocate nearly 180,000 NIS (\$37,500) for improving waste collection and sewage infrastructures in Palestinian neighbourhoods in East Jerusalem, explicitly excluded the areas beyond the separation barrier, citing “ongoing interministerial” discussions on addressing the challenges in those areas.

The lack of access to services, often compounded by restrictions on the freedom of movement, contribute directly to the coercive environment in occupied East Jerusalem, and therefore to the risk of forcible transfer of its Palestinian residents.

What should be done by Israeli authorities to remove the risk of forcible transfer against Palestinian residents of occupied East Jerusalem?

Continuing discriminatory practices and policies applied against Palestinians in occupied East Jerusalem, in conjunction with Israeli settlement activity, have created a coercive environment that gives rise to placing hundreds of them to live in almost untenable circumstances, and therefore at risk of prohibited forcible transfer.

UN bodies has repeatedly issued warnings and recommendations to Israeli authorities calling for a halt and reversal of all settlement development and related activities in occupied East Jerusalem; an end to those activities which contribute to the coercion of a coercive environment; a review of planning laws and policies to ensure compliance with international human rights and humanitarian law; a halt to actions based on existing discriminatory policies and practices; and action to ensure that Palestinians in East Jerusalem have access to essential services.¹² Recent developments have only affirmed the more pressing need for such action and the importance of mitigating against more tensions by affording Palestinians in occupied East Jerusalem the basic human rights protections they need and deserve.

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¹¹ See Association for Civil Rights in Israel, East Jerusalem: Facts and Figures 2017, 21 May 2017. The areas comprise Qalandia, Kufr Aqab, Shuafat refugee camp and surrounding area (including Ras Khamis and Ras Sheheda) and parts of Im Shirayat, Abu Emgheyreh, Al Shayyah, Ber Owna and As Sawariya.

¹² See A/HRC/34/38, A/HRC/34/39 and A/HRC/37/43.