

# **The Occupying State Demands Loyalty from an Occupied People:**

## **The Expulsion of Jerusalemite Palestinians on the Grounds of Non-Allegiance to Israel**

Karel Reybrouck

Since the unilateral annexation of East Jerusalem in 1967, Israel has manipulated Jerusalem's demographic balance by increasing the Jewish population and containing the growth of the Palestinian population of the city. To achieve this goal, Israel has employed a variety of measures, such as the isolation of East Jerusalem from the rest of the West Bank, land confiscation, settlement expansion, and the denial of residency, construction, housing, and services to Palestinians.<sup>1</sup> The tool that most directly forcibly transfers Palestinians from Jerusalem is the revocation of their permanent residency status, thereby stripping them of the right to live in the city. Most East Jerusalem Palestinians are not citizens of Israel; they merely hold an inferior permanent residency status, the same status given to (non-Jewish) immigrants who reside in Israel for a long period of time. This status can be cancelled at the discretion of Israel's minister of interior.<sup>2</sup> Ergo, the permanent residency status is as permanent as the Red Sea is red. Israel doesn't view Palestinian Jerusalemites as native to the city and possessing an unconditional right to live in it. Since 1967, Israel has revoked the residencies of more than 14,500 Palestinian Jerusalemites.<sup>3</sup> That more than half of these residencies were revoked between 2006 and 2015 clearly shows that Israel has intensified its policy of forced displacement of Palestinian Jerusalemites over the last decade.<sup>4</sup>

The vast majority of residency revocations occur when a Palestinian Jerusalemite fails to prove that his or her "center of life" is in Jerusalem. These people often lived abroad, in the West Bank, or in Gaza for many years and consequently lost the right to live in Jerusalem, the city where they were born and

raised. Permanent residency revocation of the indigenous Arab population of Jerusalem – although manifestly breaching the prohibition of forced displacement under international humanitarian law – is permitted by the Israeli judicial system. The “center of life” criterion, which laid the groundwork for the expulsion of thousands of Palestinian Jerusalemites, was in fact developed by the Israeli Supreme Court in the 1990s.

In the new millennium, with the center of life criterion strongly cemented in the Israeli legal system, the Israeli ministry of interior decided to initiate a new grounds for residency revocations: the “allegiance” criterion. This criterion entails that anybody whose acts constitute a breach of allegiance to the state of Israel (according to the Israeli minister of interior) risks punitive residency revocation. The already uncertain legal status of permanent residents has since become even more precarious, as Palestinians who have never set foot out of Jerusalem can now lose the right to live in the city where they were born and raised and where their “center of life” is firmly established.

This article first briefly discusses the background of the center of life criterion before turning to the allegiance criterion, discussing two principal cases of punitive residency revocation in detail. Finally, this article concludes that the policy of punitive residency revocation constitutes a flagrant violation of international law, which moreover invokes the responsibility of third parties to hold Israeli officials accountable.

## **The Center of Life Criterion**

The power to revoke a permanent residency is vested in the Israeli minister of interior by article 11 of the Entry into Israel Law, which vaguely states that: “The Minister of the Interior may at his discretion cancel any permit of residence granted under this Law.”<sup>5</sup> During the past fifty years, the minister of interior and Israel’s Supreme Court have gradually expanded the scope of this article and the grounds for residency revocation.<sup>6</sup> The initial policy provided that a resident would lose his residency status by “settling outside Israel.” This criterion would be fulfilled if a Palestinian permanent resident left Israel (or the West Bank or Gaza) for a period of seven years or by receiving the status of resident or citizen of another country.<sup>7</sup> In the first twenty-eight years of the occupation, Israel revoked a little over three thousand residencies.<sup>8</sup>

In 1995, Israel suddenly broadened the scope of article 11 and the criteria for residency revocation. This abrupt policy change was prompted by the landmark Shiqaqi case.<sup>9</sup> Fathiyya Shiqaqi was a Jerusalem resident and the wife of Fathi Shiqaqi, founder of the Islamic Jihad movement in Palestine. She left Jerusalem for Syria after her husband’s deportation in 1988. When she returned to Jerusalem six years later, the ministry of interior rejected her request to register her three children and revoked her residency, even though she hadn’t met any of the relevant criteria for residency revocation at the time.<sup>10</sup> This policy change, which led to a drastic intensification of residency revocations, was approved – and in part developed – by the Israeli Supreme Court: in fact, the center of life criterion was coined by the Supreme Court in the 1988 Awad judgment, which later inspired the Shiqaqi judgment.<sup>11</sup>

After the Shiqaqi case, Israel started to revoke the residencies of other Jerusalemites who had resided abroad for less than seven years and who had not obtained residency status or citizenship of a foreign country. According to the new policy, a Palestinian would be considered to have settled outside Israel if his or her “center of life” was outside Israel.<sup>12</sup> To make matters worse, Israel now considered the West Bank and Gaza to be “outside Israel.”<sup>13</sup> This new criterion led to a new wave of revocations: in the twenty years since 1995, more than eleven thousand residencies have been revoked.<sup>14</sup>

## **The Breach of Allegiance Criterion**

In the new millennium, a dangerous precedent was set when Israel suddenly established a new ground for residency revocations. In 2006, the Israeli interior ministry decided to revoke the residency status of four East Jerusalem Palestinians because they violated their minimal obligation of loyalty to the state of Israel. According to the minister, these Jerusalemites failed to fulfill their duty of allegiance to Israel because of their affiliation with the militant Palestinian movement Hamas. A petition questioning the legality of residency revocations based on this new allegiance criterion is still pending before the Supreme Court. In January 2016, without awaiting the court’s decision on the legality of this new policy, Israel’s interior minister punitively revoked the residency status of another three East Jerusalem Palestinians who are suspected of throwing stones leading to the death of an Israeli citizen.

### ***The Abu ‘Arafa Cases (2006)***

After the last elections for the Palestinian Legislative Council in 2006, Israel revoked the residencies of four elected members from East Jerusalem – parliamentarians Muhammad Tawtah, Ahmad ‘Atun, and Muhammad Abu Tir, and the Palestinian Authority Minister of Jerusalem Affairs Khalid Abu ‘Arafa – because of their affiliation with the Change and Reform party, a group aligned with Hamas.<sup>15</sup> Israel’s minister of interior argued that by their political affiliation these four politicians “severely violated their minimal obligation of loyalty to the State of Israel,”<sup>16</sup> and that he was thus within his discretionary powers under article 11 of the Entry into Israel Law to punitively revoke the permanent residency status of the four elected members of parliament.<sup>17</sup>

This precedent has a detrimental impact on the stability of the permanent residency status of Jerusalemites. As the Shiqaqi case ushered in the “center of life” phase, the Abu ‘Arafa cases inaugurated the next stage of the occupation, in which Israel can force the Jerusalemite Palestinians to choose: be loyal or lose your residency. Israel chooses the first victims of a new policy wisely: few were eager to defend the case of the wife of Fathi Shiqaqi, or the cases of the four MPs affiliated with Hamas. Yet, these landmark cases expand the scope of article 11 of the Entry into Israel Law and test new grounds for residency revocation. The number of residency revocations multiplied by a factor of

four after the introduction of the center of life criterion in the Shiqaqi case.<sup>18</sup> It is hard to predict how many Jerusalemite Palestinians will lose their residency on the grounds of non-allegiance, but a criterion as vague and broad as “breach of allegiance to the State of Israel” is likely to endanger large numbers of Jerusalemite Palestinians.

That very few cases of punitive residency revocation have followed the Abu ‘Arafa test cases is mainly due to the fact that – contrary to the center of life criterion – the Israeli Supreme Court has not yet approved this new policy. In 2006, a number of human rights organizations petitioned the court in a bid to cancel the residency revocations of Abu ‘Arafa, Tawtah, ‘Atun, and Abu Tir.<sup>19</sup> The petition challenges the authority of the minister of interior to revoke the permanent residency of East Jerusalem Palestinians based on breach of allegiance in the absence of explicit authorization under article 11 of the Entry into Israel Law.<sup>20</sup> For over a decade, this general petition has been pending in the Supreme Court. Given the significant legal objections (dealt with in the final section of this article) to the revocation of residency based on breach of allegiance, it should come as no surprise that the Supreme Court has struggled with this petition and delayed its judgment.

So far, about a dozen cases of punitive residency revocation are known and documented.<sup>21</sup> The Abu ‘Arafa cases are not the most recent, nor the earliest examples of punitive residency revocation cases. The first known cases in which “breach of loyalty to Israel” was used date from 2002, when the minister of interior punitively revoked the permanent residency status of four members of the “Silwan cell” responsible for bombing the Hebrew University in 2002.<sup>22</sup> The most recent cases date from January 2016, when Israel revoked the residency statuses of three youths suspected of throwing stones.

### ***The Abu Kaf Cases (2016)***

The government should have awaited the judgment in the Abu ‘Arafa petition regarding the legality of punitive residency revocation, as that judgment will directly impact all procedures of punitive residency revocation. However, the wave of unrest and violence in the occupied Palestinian territories since October 2015 formed the ideal pretext for Israel’s government to resume the policy of punitive residency revocation. Well aware that the Supreme Court has been struggling since 2006 to reach a decision regarding the legality of punitive residency revocation, the Israeli government decided to restart its revocation of residencies based on breach of allegiance anyway. By mid-October, the Israeli security cabinet approved a series of additional measures to deal with the wave of “terrorism,” such as the confiscation and demolition of assailants’ homes and the revocation of their residency status.<sup>23</sup>

The first victims of the security cabinet’s counter-terrorism measures were three young Palestinians from the East Jerusalem neighborhood of Sur Bahir: ‘Abid Dwayat (age 19), al-Walid Atrash (age 18), and Muhammad Abu Kaf (age 18).<sup>24</sup> These teenagers are suspected of throwing rocks at vehicles on a motorway in Jerusalem, causing the death of an Israeli citizen, the late Alexander Levlovitch, who lost control of his car after being

hit by the rocks.<sup>25</sup> Israel's interior minister used article 11 of the Entry into Israel Law to revoke their permanent residency statuses in January 2016, arguing that:

[I]n view of the host of rights and obligations arising from a permanent residency status, the residency status requires basic commitment and loyalty in view of the fact that residency, and all the more so permanent residency, is not a status which only grants rights without any obligations and as such it embodies practices which pertain to the collection of duties and obligations of the person who holds said status and who wishes to continue to hold it.

A permanent residency status is revoked in very extraordinary cases and after consultation with the Attorney General, and is limited to cases in which the most fundamental nature of the permanent residency status in Israel is undermined, such as in the case at hand.<sup>26</sup>

On 28 February 2016, a petition was lodged before the Supreme Court against these residency revocations.<sup>27</sup> In the proceedings that followed, the ministry of interior strangely switched strategy. In January, the minister of interior expressed his belief that he could punitively revoke residencies notwithstanding the fact that the Supreme Court hadn't reached a decision in the general petition concerning the four parliamentarians. In April, the state's attorney general, who represents the government of Israel and the minister of interior, stated that residency revocation cases would be put on hold until the High Court of Justice decides on the general petition from 2006.<sup>28</sup> The minister of interior likely expects a better outcome in a case concerning four parliamentarians affiliated with Hamas than in a case concerning three boys suspected of throwing rocks.

The final section will elaborate on how the policy of punitive residency revocation and the allegiance criterion violate Israeli domestic law and more importantly international human rights law and international humanitarian law.

## **Punitive Residency Revocation Violates International Law**

The Abu Kaf petition was rendered irrelevant after the strategic turn of Israel's minister of interior but nevertheless contained interesting legal arguments concerning the illegality of punitive residency revocations in the Israeli domestic legal system.

### ***Transgressing the Bounds of Executive Power***

The minister of interior capitalized on the wide discretionary powers provided by article 11 of the Entry into Israel Law to revoke the residency of a permanent resident based on a breach of allegiance to Israel. The minister of interior's sudden application of the allegiance criterion raised legitimate legal concerns. The policy of punitive residency revocation severely violates Jerusalemite Palestinians' right to freedom of movement,

the right to leave and return to one's country, the right to a family life, and the right to equality before the law; moreover, the policy has no explicit legal basis in Israeli law.<sup>29</sup> Such an extreme and liberticidal measure as punitive residency revocation, created without explicit legal basis in primary legislation, represents a blatant violation of the principles of the rule of law and separation of powers.<sup>30</sup> A minister, who is part of the executive power, is supposed to execute and enforce, rather than make, the law.

The minister accorded himself the power to revoke, by way of punishment, permanent residency status of those who – in the sovereign assessment of that same minister – breached their duty of allegiance to the state of Israel. By doing so, the minister bypassed not only legislative, but also judiciary power. In democratic systems that uphold the rule of law, punishment with far reaching detrimental effects on a person's fundamental rights and liberties (such as incarceration, deprivation of certain political or civil rights, and so on) must be decided on by the judiciary system. The proper arena within which to deal with criminal behavior, as in the Abu Kaf cases, is a criminal court.<sup>31</sup> The Israeli interior minister, however, accorded himself the power to sentence criminals, without having to respect the basic rights accorded to defendants in a criminal trial, such as fair punishment and the presumption of innocence.<sup>32</sup>

The additional punishment imposed on Abu Kaf, Atrash, and Dwayat, is unfair because it is manifestly disproportionate.<sup>33</sup> In addition to the penal sentence they face in the event they are found guilty by the criminal court, Israel not only revoked their residency, but also instigated procedures to punitively demolish their homes.<sup>34</sup> By consequence, the teenagers risk triple punishment for a single offence. While the actions against the homes of the Abu Kaf and Atrash families were halted because of the lack of proof that they were directly involved in the fatal accident, the High Court of Justice judged there was sufficient evidence against Dwayat, and thus did not prevent the punitive sealing of the Dwayat family house, rendering Dwayat's mother homeless.<sup>35</sup> Punitive home sealing flagrantly violates international law's prohibition of collective punishment and the destruction of property of civilians under occupation.<sup>36</sup>

The proceedings concerning the house demolitions cases illustrate that there remains doubt about the extent of the criminal acts committed by the defendants. Until a judge delivers his final judgment on this case, the defendants enjoy the presumption of innocence. The minister of interior violated this guarantee by prematurely (the criminal proceedings in the Abu Kaf cases were only in their initial stages), unnecessarily (the defendants were already in jail), and unilaterally revoking the residency statuses under political and media pressure.<sup>37</sup>

However, this is not simply a case of the interior minister overstretching his powers. Arguing that the minister cannot punitively revoke residencies merely because he lacks the adequate legal basis and cannot bypass the criminal proceedings falsely implies that punitive residency revocation would be permitted if only a specific legal basis is provided and a penal judge was to revoke the residency status. In January 2016, Likud Member of Knesset Oren Hazan tried to address the legal basis issue by proposing a bill that explicitly provides the minister of interior with the power to revoke permanent residencies of persons “who have been convicted of an act that constitutes a breach of

allegiance to the State of Israel.”<sup>38</sup> The bill also targets the family members of a non-allegiant person, granting the minister power to revoke the permanent residency status of spouses, parents, or children of the non-allegiant person – which constitutes a form of collective punishment, which is illegal under international law.<sup>39</sup> The bill hasn’t yet been put to vote in the Knesset and it can only be hoped that this dangerous bill never sees the light of day.

### *Allegiance and Residency Status*

The minister of interior is not authorized to revoke the permanent residency status of East Jerusalem residents on the grounds of “breach of allegiance” because their permanent residency status does not entail a duty of allegiance to the state.<sup>40</sup> East Jerusalemite Palestinians obtain this permanent residency status by virtue of birth in a territory that was annexed by Israel in 1967.<sup>41</sup> Fifty years ago, Israel registered the Palestinians who lived in the annexed territory as permanent residents. Nobody could reasonably expect these permanent residents to be allegiant to the state of Israel, the enemy occupier that now imposed its law and jurisdiction on them against their will. Though they are accorded the same status by Israeli law, there is a fundamental difference between immigrants who choose to move to Israel and Jerusalemite Palestinians who were born in occupied East Jerusalem under Israeli jurisdiction. Expecting the first category of permanent residents to be allegiant is reasonable. However, expecting the second category of residents to be loyal disregards the historic reality that East Jerusalemite Palestinians didn’t choose to live in Israel, but instead were forced to live under Israeli rule.<sup>42</sup>

There is another more technical reason why residency status cannot imply a duty of allegiance to the state of Israel. Article 11 of Israel’s Nationality Law provides that the Israeli citizenship status of someone who acquired this citizenship status by naturalization can be revoked if this person commits an act of disloyalty toward the State of Israel. However, if that person becomes stateless after being stripped of his nationality status, he shall be given a permanent residency status in Israel. In short: a non-allegiant Israeli can become a permanent resident of Israel. This proves that a permanent residency status does not entail a duty of loyalty to Israel.<sup>43</sup>

International humanitarian law prohibits an occupying power from imposing a requirement of allegiance toward an occupied population. As stated in the Hague Regulations: “It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.”<sup>44</sup> Likewise, the Fourth Geneva Convention condemns this requirement in an equally resolute tone: “the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.”<sup>45</sup> The conclusion is simple: international law in an overt and straightforward manner forbids an occupying power from demanding allegiance from inhabitants of occupied territory.

## ***Forced Displacement***

The most important argument against permanent residency revocation, whether on the grounds of center of life or on the grounds of allegiance, is found in the prohibition of forced displacement under international humanitarian law. Article 49, 1 of the Fourth Geneva Convention explicitly forbids forcible transfer: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

While Israel contests the applicability of the Fourth Geneva Convention to East Jerusalem,<sup>46</sup> the United Nations Security Council, the General Assembly, and the International Court of Justice have affirmed it on many occasions.<sup>47</sup> Members of the indigenous Palestinian population of East Jerusalem are thus protected persons under the precept that East Jerusalem is considered an occupied territory under international law. When a Jerusalemite Palestinian’s permanent residency status is revoked, the minister of interior strips a protected person of his right to live in East Jerusalem. The expatriated person is consequently deported abroad or forcibly transferred to the West Bank or Gaza, where he or she remains in exile. This absence of genuine choice to move away by the expelled protected persons ultimately deems this displacement unlawful.<sup>48</sup> Israel’s justification that the displaced persons were involved in terrorism, sabotage, or other criminal activities is simply irrelevant.<sup>49</sup>

Forced displacement constitutes a grave breach of the Geneva Conventions,<sup>50</sup> and international law provides punishments for violators. First, third states party to the Geneva Conventions are under the moral and legal obligation to ensure respect for international humanitarian law.<sup>51</sup> When infractions of the Geneva Convention are committed, third states dispose of a range of instruments in line with international law, like sanctions or divestment, to exert pressure on a deviating state to comply.<sup>52</sup> Further, third states must adopt the necessary legislation to penalize persons committing these grave breaches, in this case the Israeli government and the minister of interior.<sup>53</sup> All state parties are also under the legal obligation to trace and persecute these persons if they are suspected of committing grave violations of the conventions.<sup>54</sup>

Second, unlawful deportation or forcible transfer of protected persons amounts to a grave breach of the Geneva Convention and constitutes a war crime under the Rome Statute of the International Criminal Court (ICC).<sup>55</sup> Acts of forcible transfer need not be committed on a large scale in order to qualify as an international crime. In fact, an individual deportation or transfer can be considered a war crime.<sup>56</sup> When acts of forced displacement are committed as part of a widespread or systematic attack directed against a civilian population, the war crime becomes a crime against humanity.<sup>57</sup> The ICC could reasonably come to the conclusion that the policy of residency revocation has an organized and institutionalized character and therefore constitutes a *systematic* attack directed against the Palestinian population of East Jerusalem.<sup>58</sup> Given the number of forcibly displaced victims (more than 11,000 residency revocations since 1995), the ICC could alternatively conclude that the residency revocation policy constitutes a *widespread* attack against the



Palestinian population of East Jerusalem.<sup>59</sup> Unfortunately, because Palestine only recently obtained “non-member observer state” status in the United Nations General Assembly, the ICC only has jurisdiction over international crimes committed in East Jerusalem since 13 June 2014.<sup>60</sup> Consequently, only those responsible for residency revocations after this date could be tried before the ICC for war crimes or crimes against humanity.

## Conclusion

This article discussed the policy of punitive residency revocation, or residency revocation based on breach of allegiance to the state of Israel. Residency revocation is a critical component of Israel’s demographic control mechanism, which aims to guarantee a solid Jewish majority in Jerusalem.<sup>61</sup> Over the past five decades, more than 14,500 East Jerusalemite Palestinians were robbed of their permanent residency status.<sup>62</sup> They have been uprooted from their city and lost the right to build a family and to raise their children and grandchildren in Jerusalem. Indeed, the effect on families explains why the true demographic impact of residency revocations exceeds the sum of individual residency revocations. Since 1995, the rate of displacement of Palestinians from Jerusalem has drastically accelerated with the development of the “center of life” criterion in the Shiqaqi case.<sup>63</sup>

With this historic development in mind, legitimate concern was raised when the Israeli minister of interior suddenly launched the new “allegiance” criterion. In an attempt to set minds at rest, the Israeli minister of interior stated he would only punitively revoke residencies “in very extraordinary cases and . . . limited to cases in which the most fundamental nature of the permanent residency status in Israel is undermined.”<sup>64</sup> The recent evolution of the punitive residency revocation policy shows that the category of “very extraordinary cases” has already been widened: from four terrorists of the Silwan cell, to four Hamas politicians, to three youngsters who are suspected of manslaughter after throwing stones. Indeed, the three boys from Sur Bahir are not suspected of terrorist activities or even murder, they are indicted for the less serious crime of manslaughter, which by definition excludes express or implied malice.<sup>65</sup> The Abu Kaf cases therefore do not form exceptional and extreme cases that justify such a severe violation of fundamental rights as a permanent residency revocation.<sup>66</sup>

So far, a dozen cases of punitive residency revocation have been documented, but these test cases already demonstrate the widening scope of the allegiance criterion. The vague and flexible criterion of breach of allegiance provides Israel with a dangerously wide leeway to revoke many more residency statuses. Of course the policy is first tested on terrorists and Hamas members – who in their right mind would defend them? – but when the policy is cemented in the Israeli legal system it can easily be applied to stone throwers, members of other political parties, petty criminals, demonstrators, family members of “non-allegiant persons,” journalists, political activists, human right defenders, or anybody who criticizes Israel and the occupation.<sup>67</sup> The right of East Jerusalem Palestinians to freedom of expression and assembly and the right to peacefully protest

would be completely undermined.<sup>68</sup> Even supposing that the number of those displaced as a result of the allegiance criterion never reaches the numbers of those displaced based on the center of life criterion, it provides Israel with an effective tool to silence dissident voices, to exile those who step out of line, to deliver the final blow to a weak civil society, to persecute leaders in various sectors, and in general to suppress all forms of resistance to its half-century long occupation.

Israel will probably argue that it has the right to defend itself; the right to remove non-allegiant elements from the society; the right to protect its population from terrorism. Apart from the explicit interdiction under international law to demand allegiance from an occupied people,<sup>69</sup> it remains unclear how punitive residency revocation would directly prevent a terrorist attack. Usually, the residency of an assailant is only revoked after he has committed an attack, when he is arrested and is certain of spending a long period in jail. Moreover, punitively revoking residencies seems equally likely to incite, rather than to deter, violence. The Israeli occupation and its demographical component raises the concern of Palestinians, who feel unprotected by international law. Residency revocation of protected persons, be it on the grounds of center of life or on the grounds of allegiance, constitutes forced displacement and amounts to a grave breach of the Geneva Conventions, a war crime, and even a crime against humanity.<sup>70</sup> Third states, international organizations, and international courts, which have the duty and the power to pressure Israel to comply with international law, provide close to no protection.<sup>71</sup> This only leads to more frustration among Palestinians and consequently incites more violence in the occupied Palestinian territories, providing the Israeli government with a renewed pretext to launch more liberticidal policies to further the occupational agenda under the guise of “counter-terrorist measures,” thus completing the circle. Though it might be presented as a counter-terrorism measure, punitive residency revocation is in reality an instrument to further Israel’s demographic agenda for Jerusalem and a tool to effectively silence resistance against Israel’s occupation.

*Karel Reybrouck is a Ph.D. researcher at KU Leuven (Belgium). Between January and June 2016, he interned at the Community Action Center in Jerusalem, where he conducted research on residency revocation and house demolitions in East Jerusalem.*

#### Endnotes

- 1 B’Tselem, “Background on East Jerusalem,” updated 11 May 2015, online at [www.btselem.org/Jerusalem](http://www.btselem.org/Jerusalem) (accessed 9 October 2016); United Nations Office for the Coordination of Humanitarian Affairs, occupied Palestinian territory (UN OCHA), “East Jerusalem Key Humanitarian Concerns” (Jerusalem: UN OCHA, March 2011), 12–13, online at [www.ochaopt.org/documents/ocha\\_opt\\_jerusalem\\_report\\_2011\\_03\\_23\\_web\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_jerusalem_report_2011_03_23_web_english.pdf) (accessed 9 October 2016).
- 2 Article 11(a)(2), Entry into Israel Law, 5712-1952, Published in *Sefer Ha-Chukkim* no. 111 of 15 Elul 5712 (5 September 1952), 354,

- online at [www.unodc.org/res/cld/document/law-no--5712-1952--entry-into-israel-law\\_html/Entry\\_Into\\_Israel\\_1952.pdf](http://www.unodc.org/res/cld/document/law-no--5712-1952--entry-into-israel-law_html/Entry_Into_Israel_1952.pdf) (accessed 23 June 2016).
- 3 B’Tselem, “Statistics on Revocation of Residency in East Jerusalem,” updated 27 May 2015, online at [www.btselem.org/jerusalem/revocation\\_statistics](http://www.btselem.org/jerusalem/revocation_statistics) (accessed 23 June 2016); HaMoked: Center for the Defence of the Individual, “Re: Revocation of Permanent Residency Status of Jerusalem Residents in 2015,” 28 February 2016, online at [www.hamoked.org/files/2016/1160430\\_eng.pdf](http://www.hamoked.org/files/2016/1160430_eng.pdf) (accessed 23 June 2016).

- 4 B'Tselem, "Statistics on Revocation"; HaMoked, "Re: Revocation."
- 5 Article 11(a)(2), Entry into Israel Law.
- 6 Munir Nuseibah, "Forced Displacement in the Palestinian-Israeli Conflict, International Law and Transitional Justice" (PhD thesis, University of Westminster, 2013), 83, online at [westminsterresearch.wmin.ac.uk/13287](http://westminsterresearch.wmin.ac.uk/13287) (accessed 9 October 2016).
- 7 Article 11, Settlement in a Country outside of Israel Regulation (No. 2) (1985), translation by HaMoked online at [www.hamoked.org/files/2010/regulation%2011a.pdf](http://www.hamoked.org/files/2010/regulation%2011a.pdf) (accessed 9 October 2016); Nuseibah, "Forced Displacement," 81–87; Yael Stein, "The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians" (Jerusalem: HaMoked and B'Tselem, 1997), 13, online at [www.btselem.org/publications/summaries/199704\\_quiet\\_deportation](http://www.btselem.org/publications/summaries/199704_quiet_deportation) (accessed 9 October 2016).
- 8 B'Tselem, "Statistics on Revocation."
- 9 High Court of Justice (HCJ) 7023/94, *Fathiyya Shiqaqi v. Minister of Interior* (HCJ 1995).
- 10 HCJ 7023/94, *Shiqaqi v. Minister of Interior*.
- 11 HCJ 282/88, *Mubarak Awad v. Yitzhak Shamir, Prime Minister and Minister of Interior et al.* (HCJ 1988); HCJ *Shiqaqi v. Minister of Interior*; Nuseibah, "Forced Displacement," 83–85.
- 12 HCJ 7023/94, *Shiqaqi v. Minister of Interior*; Nuseibah, "Forced Displacement," 84–86; Lea Tsemel, "Continuing Exodus: The Ongoing Expulsion of Palestinians from Jerusalem," *Palestine Yearbook of International Law* 9, no. 1 (1996–1997): 43–45; Usama Halabi, "Legal Status of the Population of East Jerusalem Since 1967 and the Implications of Israeli Annexation on Their Civil and Social Rights," in *43 Years of Occupation: Jerusalem File* (Jerusalem: Civic Coalition for Jerusalem, 2009), 17, online at [civicoalition-jerusalem.org/system/files/documents/chap\\_1-legal\\_status\\_of\\_the\\_population\\_of\\_ej.pdf](http://civicoalition-jerusalem.org/system/files/documents/chap_1-legal_status_of_the_population_of_ej.pdf) (accessed 9 October 2016); Natalie Tabar, "The Jerusalem Trap: The Looming Threat Posed by Israel's Annexationist Policies in Occupied East Jerusalem" (Ramallah: al-Haq, 2010), 14, online at [www.alhaq.org/publications/publications-index/item/the-jerusalem-trap](http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap) (accessed 9 October 2016); Yael Stein, "The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Residents" (Jerusalem: HaMoked and B'Tselem, 1998), 8, online at [www.btselem.org/download/199809\\_quiet\\_deportation\\_continues\\_eng.doc](http://www.btselem.org/download/199809_quiet_deportation_continues_eng.doc) (accessed 9 October 2016).
- 13 HCJ 7023/94, *Shiqaqi v. Minister of Interior*.
- 14 B'Tselem, "Statistics on Revocation."
- 15 "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue: Addendum, Mission to Israel and the Occupied Palestinian Territory" (New York: UN Human Rights Council, 11 June 2012), 18–19, online at [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17-Add2_en.pdf) (accessed 9 October 2016); Civic Coalition for Palestinian Rights in Jerusalem, *Four Elected Members of Palestinian Legislative Council Given Notice of Transfer and Deportation*, 17 June 2010, online at [civicoalition-jerusalem.org/press-releases/four-elected-members-palestinian-legislative-council-given-notice-transfer-and-deport](http://civicoalition-jerusalem.org/press-releases/four-elected-members-palestinian-legislative-council-given-notice-transfer-and-deport) (accessed 9 October 2016); Norwegian Refugee Council (NRC), "Fractured Lives: Restrictions on Residency Rights and Family Reunification in Occupied Palestine" (Jerusalem: NRC, December 2015), 47, online at [www.nrc.no/globalassets/pdf/reports/fractured-lives.pdf](http://www.nrc.no/globalassets/pdf/reports/fractured-lives.pdf); Nuseibah, "Forced Displacement," 86–87.
- 16 "Report of the Special Rapporteur," 18–19, Nuseibah, "Forced Displacement," 86–87.
- 17 Israel Ministry of Foreign Affairs, *Removal of Jerusalem Residency of Four Hamas Representatives – Legal Background*, 25 October 2015, online at [israelforeignaffairs.com/2015/10/removal-of-jerusalem-residency-of-four-hamas-representatives-legal-background/](http://israelforeignaffairs.com/2015/10/removal-of-jerusalem-residency-of-four-hamas-representatives-legal-background/) (accessed 9 October 2016).
- 18 B'Tselem, "Statistics on Revocation."
- 19 HCJ 7803/06, *Khalid Abu Arafef et al. v. Minister of Interior* (HCJ 2006).
- 20 HCJ 7803/06, *Abu Arafef v. Minister of Interior*; Nuseibah, "Forced Displacement," 86–87.
- 21 Community Action Centre, "Punitive Residency Revocation" (Jerusalem: al-Quds University, Jerusalem, 2016), 13–14.
- 22 AP 303/06, *Kasem v. Minister of Interior* (2006).
- 23 Prime Minister's Office (Israel), *Security Cabinet Approves Series of Additional Measures to Deal with the Wave of Terrorim*, 14 October 2015, online at [www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokecabinet141015.aspx](http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokecabinet141015.aspx) (accessed 9 October 2016); HaMoked, *Government Secretary Announcement at the End of the Weekly Cabinet Meeting, October 18, 2015*, 18 October 2015, online at [www.hamoked.org/Document.aspx?dID=Documents2919](http://www.hamoked.org/Document.aspx?dID=Documents2919) (accessed 9 October 2016).
- 24 Petition for *Order Nisi* in HCJ 1635/16, *Abu Kaf et al. v. Government of Israel et al.*, 28 February 2016, 6, online at [www.hamoked.org/files/2016/1160038\\_eng.pdf](http://www.hamoked.org/files/2016/1160038_eng.pdf) (accessed 9 October 2016).
- 25 Petition for *Order Nisi*, 7.
- 26 Aryeh Mahlouf Deri to Michal Pomeranz, "Re: Decision according to section 11(a) of the Entry into Israel Law: Your client: Mr. Abu Kaf," 19 January 2016, online at [www.hamoked.org/files/2016/1160036\\_eng.pdf](http://www.hamoked.org/files/2016/1160036_eng.pdf) (accessed 9 October 2016).

- 27 Petition for *Order Nisi*.
- 28 HaMoked, *State's Notice to the HCJ: Request to Delay Response to the Petition against the Revocation of Status of Four Men from East Jerusalem Pending Judgment in the Public Petition on This Issue*, 25 April 2016, online at [www.hamoked.org/Document.aspx?dID=Updates1718](http://www.hamoked.org/Document.aspx?dID=Updates1718) (accessed 9 October 2016).
- 29 Articles 12 and 26, International Covenant on Civil and Political Rights (ICCPR); article 10, International Covenant on Economic, Social, and Cultural Rights; Community Action Centre, "Punitive Residency Revocation," 17–19.
- 30 Petition for *Order Nisi*, 24–27.
- 31 Petition for *Order Nisi*, 39.
- 32 Article 14, ICCPR
- 33 Petition for *Order Nisi*, 39.
- 34 HCJ 1336/16, 1337/16, 1721/16, 1777/16, *Abu Kaf et al. v. GOC Home Front Command* (HCJ 2016), para. 2.
- 35 *Abu Kaf et al. v. GOC Home Front Command*, para. 10 and 11.
- 36 Articles 33 and 35, Fourth Geneva Convention; article 46, Hague Regulations.
- 37 Petition for *Order Nisi*, 35.
- 38 Revocation of residency of persons who breached allegiance to the State of Israel or their family members, Amendment to the Entry into Israel Bill 5786-2016 (2016), 2463; Abir Joubran-Dakwar, Adv., to Yehuda Weinstein, Attorney General, "Re: Private Member Bill Tabled by MK Oren Hazan, Scheduled to Be Brought before the Ministerial Committee for Legislation This Coming Sunday, January 17, 2016," 14 January 2016, online at [www.hamoked.org/files/2016/1160220\\_eng.pdf](http://www.hamoked.org/files/2016/1160220_eng.pdf) (accessed 9 October 2016).
- 39 Joubran-Dakwar to Weinstein, "Private Member Bill Tabled"; article 50, Hague Regulations; Article 33, para. 1, Fourth Geneva Convention.
- 40 Petition for *Order Nisi*, 21–24.
- 41 Petition for *Order Nisi*, 21–24.
- 42 Petition for *Order Nisi*, 21–24.
- 43 Petition for *Order Nisi*, 27.
- 44 Article 45, Hague Regulations.
- 45 Article 68, para. 3, Fourth Geneva Convention.
- 46 HCJ 606/78, *Ayub v. Minister of Defense*, HCJ 606/78; HCJ 2056/04, *Beit Sourik Village Council v. The Government of Israel*, para. 23; Meir Shamgar, "Legal Concepts and Problems of the Israeli Government: The Initial Stage," in *Military Government in the Territories Administered by Israel 1967–1980*, ed. Meir Shamgar (Jerusalem: Hebrew University, 1982), 13–59.
- 47 Article 4, para. 1, and article 47, Fourth Geneva Convention; UN Security Council Resolution 252, (1968); UN Security Council Resolution 267 (1969); UN Security Council Resolution 298 (1971); UN Security Council Resolution 446 (1979); UN Security Council Resolution 476 (1980); UN Security Council Resolution 478 (1980); Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention (2001); International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 101.
- 48 Commentary of 1958 on Convention (IV) Relative to the Protection of Civilian Persons in the Time of War (Geneva: International Committee of the Red Cross, 1958), 297, online at [ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=523BA38706C71588C12563CD0042C407](http://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=523BA38706C71588C12563CD0042C407) (accessed 9 October 2016); al-Haq, "Al-Haq Position Paper: Sixty Years of Nakba: Israel's Continued Policy of Forcible Displacement" (Ramallah: al-Haq, 2008), 4, online at [www.alhaq.org/attachments/article/173/Position-Paperr-Nakba.pdf](http://www.alhaq.org/attachments/article/173/Position-Paperr-Nakba.pdf) (accessed 9 October 2016).
- 49 Yutaka Arai-Takahashi, *The Law of Occupation* (Leiden: Martinus Nijhoff, 2009), 330.
- 50 Article 147, Fourth Geneva Convention.
- 51 Common article 1 of the Geneva Conventions.
- 52 Common article 1 of the Geneva Conventions.
- 53 Article 146, para. 1, Fourth Geneva Convention.
- 54 Article 146, para. 2, Fourth Geneva Convention.
- 55 Article 147, Fourth Geneva Convention; article 8(2)(a)(vii) and article 8(2)(b)(viii), Statute of the International Criminal Court.
- 56 Article 8(2)(a)(vii) and article 8(2)(b)(viii), Statute of the International Criminal Court; Arai-Takahashi, *Law of Occupation*, 338–39; Contra: HCJ 97/79, *Abu Awad v. Commander of the Judea and Samaria Region* (HCJ 1979); Contra: High Court of Justice 785/87, 845/87, and 27/88, *Abd Al Nasser al Aziz Abd al Affo et al. v. Commander of the IDF Forces in the West Bank et al.* (HCJ 1990); Contra: High Court of Justice 5973/92, *The Association of Civil Rights in Israel et al. v. Minister of Defence et al.* (HCJ 1993).
- 57 Article 7(2)(d), Statute of the International Criminal Court.
- 58 See: International Criminal Tribunal for the former Yugoslavia (ICTY), *Kordic and Cerkez* (Appeals Chamber, 2004), para. 94 and 179; ICTY, *Prosecutor v. Blaskic* (Trial Chamber, 2000), para. 203.
- 59 See: ICTY, *Limaj et al.* (Trial Chamber, 2005), para. 183; ICTY, *Prosecutor v. Akayesu* (Trial Chamber, 1998), para. 580; ICTY, *Blaskic*, para. 206.
- 60 International Criminal Court (ICC), *The State of Palestine Accedes to the Rome Statute*, 7 January 2015, online at [www.icc-cpi.int/Pages/item.aspx?name=pr1082\\_2](http://www.icc-cpi.int/Pages/item.aspx?name=pr1082_2) (accessed 9 October 2016); ICC, *Palestine Declares Acceptance of ICC Jurisdiction since 13 June 2014*, 5 January

- 2015, online at [www.icc-cpi.int/Pages/item.aspx?name=pr1080](http://www.icc-cpi.int/Pages/item.aspx?name=pr1080) (accessed 9 October 2016).
- 61 Community Action Centre, “Punitive Residency Revocation,” 7; B’Tselem, “Background on East Jerusalem”; Jerusalem Municipality, “Local Outline, Plan Jerusalem 2000, Report No. 4: The Proposed Plan and the Main Planning Policies” (August 2004), 32, online at [pcc-jer.org/arabic/Publication/jerusalem\\_master\\_plan/engchapt/Intro.pdf](http://pcc-jer.org/arabic/Publication/jerusalem_master_plan/engchapt/Intro.pdf); Nadav Shragai, *Jerusalem: Correcting the International Discourse – How the West Gets Jerusalem Wrong* (Jerusalem: Jerusalem Center for Public Affairs, 2012), 6, online at [jcpa.org/text/downloads/jerusalem-correcting-the-international-discourse-how-the-west-gets-jerusalem-wrong.pdf](http://jcpa.org/text/downloads/jerusalem-correcting-the-international-discourse-how-the-west-gets-jerusalem-wrong.pdf) (accessed 9 October 2016).
- 62 B’Tselem, “Statistics on Revocation.”
- 63 Nuseibah, “Forced Displacement,” 84–86; Community Action Centre, “Punitive Residency Revocation,” 26.
- 64 Deri to Pomeranz, “Re: Decision according to section 11(a) of the Entry into Israel Law: Your client: Mr. Abu Kaf,”; Petition for *Order Nisi*, 38; Statement of Response in H CJ 7803/06, *Khalid Abu Arafah et al. v. Minister of Interior*, para. 75, 112–13, 127–131.
- 65 Petition for *Order Nisi*, 7–8, 35–38.
- 66 Petition for *Order Nisi*, 35–38.
- 67 Community Action Center, “Punitive Residency Revocation,” 27.
- 68 Articles 18, 19, 21, ICCPR.
- 69 Article 45, Hague Regulations; article 68, para. 3, Fourth Geneva Convention.
- 70 Article 147, Fourth Geneva Convention; articles 7 and 8, Statute of the International Criminal Court.
- 71 Common article 1 of the Geneva Conventions; article 146, Fourth Geneva Convention; article 5, Statute of the International Criminal Court; Munir Nusseibah, “Israel’s Dangerous New Transfer Tactic in Jerusalem,” *al-Shabaka*, 12 April 2016, online at [al-shabaka.org/commentaries/israels-dangerous-new-transfer-tactic-in-jerusalem/](http://al-shabaka.org/commentaries/israels-dangerous-new-transfer-tactic-in-jerusalem/) (accessed 9 October 2016).

# JERUSALEM

In 1948, 80,000 Palestinians were forcibly expelled from their homes in the areas of West Jerusalem. East Jerusalem was illegally annexed by Israel in 1967. Since 1967 **apartheid** prevails in the City where the Israeli occupying power has been enacting **discriminatory** policies and laws that suppress the growth of the Palestinian community to not exceed 40% of the population of Jerusalem. Israel is engaged in a process of silent transfer and colonization aiming to create a **Jewish majority** by illegal means.

## Center of Life Policy

All Jews from abroad can become Israeli citizens

No children unregistered

Jewish families encouraged to move to Jerusalem

Jewish settlements use bypass roads to city centre

78.4% of buildings violations occurred in West Jerusalem

35% of illegally annexed lands confiscated for illegal settlement construction

89.9% of city budget for 63% of the population

93% of building permits issued to Jews

15 illegal settlements built to house 210,000 settlers

## Law of Return

## Building Permit regime

## Absentee Property Law

## 2003 Nationality and Entry Law

60% Jews

40% Palestinians

More than 14,500 had residency status revoked since 1967

Upon the annexation of East Jerusalem, Palestinians were treated as immigrants in their own country and given a revocable residency.

Over 1/3 family unification applications denied from 2000-2013

No Jerusalemite-Gazan couples can apply to family unification since 2006.

21.5% of building violations occurred in East Jerusalem

84% were subject to demolition orders

27% were subject to demolition orders

Only 13% of illegally annexed lands available for Palestinian construction

10.1% of city budget for 37% of the population

Permits cost more than \$30,000

Only 7% of all building permits are under poverty line

60,000 at risk of having their home demolished

43,000 unit housing shortage

SOURCES:  
Data aggregated from Adalah, Ashabaka, BT Tawam, Bt Tamim, Pallas, The Civic Coalition for Palestinian Rights in Jerusalem, The Society of St. Yves, and The United Nations.  
Annexation <http://bbc.ly/2dWpF72> | Residency revocation <http://bbc.ly/2dWpF72> | Family Unification <http://bbc.ly/2dWpF72> | <http://bbc.ly/2dWpF72> | The Wall <http://bbc.ly/2dWpF72> | Demolitions <http://bbc.ly/2dWpF72> | Land Confiscation <http://bbc.ly/2dWpF72> | Budgeting <http://bbc.ly/2dWpF72>

