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Al-Haq Legal Analysis: Forcible Transfer of Jerusalem Parliamentarians Demonstrates an Escalation of Israeli Measures to Transfer Palestinians from Occupied East Jerusalem

Four Jerusalemite Palestinians are facing impending forcible transfer from occupied East Jerusalem. Three are elected parliamentarians to the Palestinian Legislative Council, Mr. Muhammad Abu-Teir, Mr. Ahmad Attoun, and Mr. Muhammad Totah, and the fourth is the former Palestinian Authority Minister of Jerusalem Affairs, Mr. Khaled Abu Arafah,

These impending deportations are in keeping with Israel's policy of forcibly transferring Palestinians from East Jerusalem. In addition to the revocation of Jerusalem ID cards, which effectively rescinds the right of permanent residency to Palestinian citizens of Jerusalem and denies them access to their city, Israeli polices have made living conditions for Palestinians in Jerusalem increasingly intolerable, causing many to leave. Long-standing Israeli policies of home demolitions, settlement construction, police brutality, denial of essential services, restrictions on access to holy sites as well as cultural and educational facilities, and construction of the Annexation Wall have resulted in the indirect forcible transfer of Palestinians out of the city.

Recently introduced military orders further facilitate the forcible transfer and deportation of Palestinians from the remainder of the occupied West Bank. As analysed in Al-Haq's position paper on the issue, these military orders effectively legislate for the commission of grave breaches of the Geneva Conventions, war crimes, and crimes against humanity.

What is striking about the impending forcible transfer of the Jerusalemite legislators is that Israel is coercing the parliamentarians to surrender their democratic and human rights in exchange for allowing them to remain in their own city. Israel has forced these Palestinians to choose between exercising their rights to participate in the electoral and democratic process or being forcibly transferred from their homes, families, and community. These men have refused to bow to Israeli coercion are now liable to be arrested or forcibly transferred.

Status of Jerusalem as occupied Palestinian territory

After Israel occupied the West Bank and Gaza in 1967, one of the first administrative steps taken to consolidate its hold on Palestinian territory was the unilateral expansion of the municipal boundaries of West Jerusalem by 70,000 dunums, partially or fully engulfing 28 Palestinian villages and their lands in East Jerusalem. Successive Israeli governments have attempted to secure the de facto annexation of East Jerusalem by implementing measures to isolate it from the rest of the West Bank, including the expropriation of Palestinian land, destruction of Palestinian property and housing, curbing Palestinian demographic and geographic expansion, and reducing the number of



Palestinians resident in East Jerusalem while concomitantly increasing the population of the illegal settlements. Israeli authorities gave those Palestinians that were deemed to live within the newly-defined municipal borders residency status, denoted by a blue, 'East Jerusalem' identity cards. Green, 'West Bank' identity cards were imposed on those Palestinians outside the municipal boundaries of Jerusalem.

In 1980, Israel passed legislation to formalise the annexation of East Jerusalem in domestic Israeli law. The Basic Law: Jerusalem, the Capital of Israel declared the city the "complete and united" as the capital of Israel. This official, albeit illegal, annexation was condemned by the United Nation's Security Council which refused to recognise the validity of the annexation and reaffirmed East Jerusalem's status as occupied territory. The Security Council held that: all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem...are null and void.' The July 2004 ICJ Advisory Opinion on the Wall confirmed the longstanding position of the international community regarding East Jerusalem when it held: 'The territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate was occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power.... All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.' The Court further reiterated the applicability of international humanitarian and human rights law to the OPT, including East Jerusalem, thereby comprehensively bankrupting the Israeli claim that it is not bound by these norms of international law in respect of its action in the territories it occupies.

The cornerstone of Israeli policy in East Jerusalem is to ensure and maintain the substantial demographic superiority of the Jewish Israeli population of Jerusalem over the Palestinian population mainly in the east of the city, in order to prevent Jerusalem from becoming the capital of an independent Palestinian state.

Status of Palestinians in Occupied East Jerusalem

East Jerusalem Palestinians, despite living on what is recognised as occupied Palestinian territory are accorded a different status than Palestinians elsewhere in the OPT. East Jerusalem Palestinians hold the status of "permanent residents" of the State of Israel, which accords them the same rights as foreign citizens who immigrated to Israel but have not received full citizenship. Permanent residency allows East Jerusalem Palestinians to live and work in Israel without the necessity of special permits, as well as entitlements to social security, and the right to vote in local elections, but not in elections to the Knesset. Permanent residency is not automatically passed to the holder's children and does not provide for the right to return to Israel or East Jerusalem at any time.

As individuals with permanent residency status in East Jerusalem, Palestinians are liable to have their status revoked in accordance with Article 11.a of the Entry into Israel Law, 1952. According to this law the Israeli Minister of the Interior can use his discretion to revoke or cancel an individual's permanent residency status. Given that Israeli policy has consistently pressured and forced Palestinians to leave Jerusalem, the Knesset is currently attempting to pass amendments to this law which would provide a more solid legal basis for the revocation of Jerusalem identity cards, one less liable to being perceived as arbitrary by the Israeli judiciary.



A legislative bill dated 2010, amending the Entry into Israel Law of 1952 and entitled 'Revocation of Nationality for Terrorists and Revocation of Permanent Status for Terrorists and their Families', has passed its preliminary reading in Israel's parliament, indicating it will soon be officially adopted. This amendment would add an additional paragraph to Article 11.a of the Entry into Israel Law 1952 to further undermine the status of Palestinians in occupied East Jerusalem. The bill provides that the Minister of the Interior can revoke the permanent residency status of any individual participating in terrorist activity against the state of Israel or Israeli citizens, or of any individual that is a member of a terrorist organization as defined by Israeli law.

The amendment provides that revocation of permanent residency status will be further applicable to individuals the Minister finds are helping, supporting, financing, or otherwise actively supporting terrorist activities directly or indirectly, and that threaten the security of the state of Israel or the security of Israeli citizens. According to the amendment, revocation of status will not only apply to the individual concerned, but also to his or her parents, spouse, and children.

An explanatory note to the amendment claims that such powers are necessary on 'security' grounds in order to restrict the entry into Israel and movement of certain East Jerusalem Palestinians. Before revocation of permanent residency status can be enforced, the Minister of the Interior must give the target of the order and his or her family the opportunity to prove to the minister that neither the target nor his or her family members have been involved in terrorist activities. The explanatory note also states that with respect to the revocation of nationality of Israeli citizens convicted of espionage or membership of terrorist organisations, only the target will be deprived of nationality, and not family members, this being in accordance with the 'principle of proportionality'.

The Jerusalemite Parliamentarians

The three parliamentarians were elected to the PLC in January 2006 on the Change and Reform list. In June 2006 they were arrested by Israel and later sentenced by an Israeli military court to sentences of between two and four years on charges of membership in and of having an official position on the Change and Reform list.

In an affidavit to Al-Haq, Mr Ahmad Attoun describes how in January 2006 he was elected as a member of the PLC for East Jerusalem as a member of the Reform and Change list. Israel and the PLO had consented to the elections and candidates in all parts of the OPT, including East Jerusalem, where the Reform and Change list won the majority of seats. On 28 May 2006, and in a display of frustration with the results of the democratically held election, the Israeli Minister of the Interior announced his decision to revoke the permanent residency status of Mr Attoun, and to deport him from Jerusalem citing membership in the Hamas party and in the PLC as proof that he was not being loyal to Israel. A similar scenario played out with the other three men involved.

A letter sent from the Minister of the Interior to Mr Attoun stated that in accordance with article 11.a.2 of the Entry into Israel Law, 1952 the Minister was exercising his discretion to revoke or permanently cancel Mr Attoun's permanent residency status. The basis for this decision was his claim that Mr Attoun was a representative of the PLC in Ramallah, and a representative of Hamas, who played an active role in Hamas's terrorist institutions. The letter cited



Mr Atoun's membership as a parliamentarian in another 'authority' ie the PLC, and membership of Hamas, as actions in violation of the primary loyalty that he was due to accord the Israeli state as a permanent resident.

The letter went on to give notice that the Minister intended to use his discretionary authority to revoke and cancel Mr Attoun's permanent residency status, and informed him that he was being offered the options of either resigning from the PLC or of bringing to the Minister within 30 days, an argument in writing to convince him not to use his discretionary powers.

On 29 June 2006 Israeli forces raided Mr Attoun's home and the homes of the other three men and brought them to the Muscoviya compound in Jerusalem where a member of the Israeli internal secret security (Shabak) told Mr Attoun that he and the other three men had been arrested for political reasons, with the aim being to pressure Hamas into releasing the Israeli soldier Gilad Shalit who had been taken captive a few days previous. Mr Attoun was taken to Ofer military prison, but following 17 days in detention the Israeli Attorney-General refused the prosecution's request to subject Mr Attoun to administrative detention. This was on the grounds that there was no evidence backing up the charges against him.

Despite defending himself on the grounds that the Reform and Change list was not Hamas, nevertheless Mr Attoun remained in Israeli detention and over the next 18 months was brought before Israeli military judges on a total of 162 occasions. At one hearing the prosecution called an Israeli researcher as a witness. The witness claimed that his research proved that Reform and Change had strong relations with Hamas, a statement accepted by the judge who then sentenced Mr Attoun to three and a half years in prison.

Mr Attoun was released from prison on 2 November 2009.. Upon his release he discovered that his Israeli issued identity card number had been cancelled, that he was denied access to social security benefits, and was denied a laissez passé (a document Palestinians with permanent residency status are required to possess to travel abroad). He brought a petition to the Israeli High Court to challenge this treatment but the initial hearing, set for 5 May 2010, was postponed until August 2010.

On 4 June 2010 Israeli forces raided Mr Attoun's home and brought him again to the Muscoviya compound. His ID was taken at the entrance and a Shabak member informed him that his Israeli issued ID was being cancelled, and was being confiscated by the Minister of the Interior. The internal security then informed Mr Attoun that his permanent residency status was being revoked and presented him with a temporary permit to remain in Jerusalem until 2 July 2010, after which date should he remain in Jerusalem he would be considered an infiltrator and liable to imprisonment and/or forced transfer or deportation.

The other three parliamentarians have suffered similar treatment, with Mr. Abu Teir being ordered to leave occupied East Jerusalem and Israel by 19 June 2010, and the others no later than 2 July 2010.

A petition was filed at the Israeli Supreme Court on 15 June 2010 contesting the revocation of the men's residency status but the case remains pending.



Legal Analysis

Oslo Accords

Palestinians in East Jerusalem voted and stood for election in 2006 election for PLC and Chair of PNA, with the consent of the PLO and Israel, and under independent observation by the international community. Elections to the PLC were a fundamental aspect of the Oslo Accords, as set forth in Article III of the Declaration of Principles, and were intended to constitute a step towards the realization of the rights of the Palestinian people in all the OPT. The arrest and punishment of the parliamentarians occurred as a result of Israel's disagreement with the results of the elections. Once again, in this instance, Israel must be considered to be acting in blatant violation of the terms and principles of the Oslo Accords.

International Humanitarian Law

The prohibition of forced transfer and deportation

Forcible deportations or transfers of 'protected persons' in occupied territory are prohibited under international humanitarian law. Article 49 of the Fourth Geneva Convention, which is binding on Israel, prohibits 'individual or mass forcible transfers, as well as deportations of protected persons from occupied territory...regardless of their motive.'

Furthermore, forcible deportations or transfer are criminalised by Article 7(1)d of the Rome Statute of the International Criminal Court which states that deportation or forcible transfer of persons, when committed as part of a widespread or systematic attack directed against a civilian population constitutes a crime against humanity. Under Article 8(2)vii of the Rome Statute, 'unlawful deportation or transfer' constitutes a war crime, 'in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes'.

Forcible deportation and transfer is understood in international law as the 'involuntary and unlawful evacuation of individuals from territory in which they reside [...]. Deportation presumes transfer beyond state borders, whereas forcible transfer relates to displacement within a state.' In its *Kristic* decision of 2001, the Trial Chamber of the International Tribunal for the Former Yugoslavia addressed the situation of forcible transfer within a state, finding Radislav Kristic guilty of crimes against humanity for the forcible transfer of Bosnian Muslims within the territory of Bosnia and Herzegovina. As such, the transfer of Palestinians from Jerusalem to the West Bank or Gaza, although within the OPT, is prohibited. Evacuations of protected persons are permissible in only very exceptional circumstances, where imperative military necessity or the security of the civilian population demands it. If no such exceptional circumstances exist, the deportations or transfers are unlawful, and a grave breach of the Geneva Convention, attracting the most severe penal sanction, and individual criminal liability to those responsible for the acts.

Given that the Israeli Minister of the Interior has explicitly stated that the Parliamentarians can retain their permanent residency status should they resign from the positions they were democratically elected to, there can be no doubt but that the revocation of their status and the impending forced transfer or deportations would be unlawful since the



reason for transfer is purely political, and not as a result of any imperative military necessity or the security needs of the population.

The prohibition of collective punishment

Article 33 of the Fourth Geneva Convention prohibits the imposition of “[c]ollective penalties and likewise all measures of intimidation or of terrorism....” Pictet’s official Commentary to the Convention relates that ‘[Collective penalties] are opposed to all principles based on humanity and justice, and it is for that reason that the prohibition on collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons wherever they may be.’

The amendment of the Entry into Israel Law of 1952 entitled ‘Revocation of Nationality for Terrorists and Revocation of Permanent Status for Terrorists and their Families’ legislates for such collective punishment as prohibited by the Geneva Conventions. By subjecting not only individuals, but also their families, to revocation of permanent residency status and subsequent forced transfer or deportation from occupied East Jerusalem, Israel is threatening to widen its policies of collective punishment against Palestinians. House demolitions are a typical manifestation of collective punishment, as is the ongoing and illegal blockade of the Gaza Strip, where the Palestinian population as a whole is being collectively punished in order to force Hamas to change its policies.

International Human Rights Law

The primary human rights violation resultant from the revocation of the permanent residency status of the Parliamentarians relates to their right to freedom of movement. Article 12 of the International Covenant on Civil and Political Rights provides that ‘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.’ This is qualified by Article 12(3) which allows for restriction on the freedom of movement of individuals if the restrictions are: ‘...provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.’ Palestinians resident in the OPT, including East Jerusalem, can only have their freedom of movement restricted under international human rights law within these parameters. As has already been stated, the current restrictions on the Parliamentarians are prompted purely for political reasons and have no legitimate grounding.

The right to self-determination

The right of the Palestinian people to self-determination in the OPT is firmly established, and pertains to all territory occupied by Israel during the 1967 war – that is, to the West Bank, including East Jerusalem, and Gaza – as a single territorial unit. The right to self-determination is, in the most general sense, the right of a population to sovereignty over a given territory. It includes the right of the population to function normally within the territory, to move around in it freely, to develop international relations, to determine who enters and stays within the territory, and to participate in the democratic process.



Article 1(1) of the International Covenant on Civil and Political Rights provides that 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' Article 25 of the Covenant provides that 'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'. Article 2 (1) further confirms that these rights are to be enjoyed without discrimination as to 'political or other opinion'.

By revoking the permanent residency status of the Jerusalemite parliamentarians, and preventing them from exercising their fundamental civil and political rights in their home city, the Israeli occupation authorities are acting in flagrant violation of their obligations under international human rights law. The denial of the parliamentarians' rights is but another far-reaching step being taken by Israel to ensure that Palestinians can never exercise their right to self-determination, nor end the occupation of their territory by Israel. Whereas the current revocations of status are being directed against individuals Israel accuses of being Hamas members, it is clear that such a process could be set in motion against any Palestinian, regardless of his or her political affiliations.

The right to self-determination, and to exercise legitimate civil and political rights must be read in light of the prohibition under international humanitarian law of forcing persons living under foreign occupation to switch their allegiance to the foreign power. Article 45 of the Fourth Hague Convention of 1907, which even the Israeli courts have recognized as customary law that is binding on Israel provides that 'It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power'.

Conclusion

Since the endorsement of the Goldstone Report, Israel has steadily increased its repression of human rights defenders and crackdown on political activists. Arrests of Palestinians protesting against the Annexation Wall, issuance of travel bans, forced transfer and deportation, the attack on the Gaza aid flotilla, as well as entry restrictions on foreign activists, politicians, and academics, wishing to visit the OPT are all symptomatic of an increasingly intolerant and undemocratic occupation regime which seeks to silence or deport Palestinians from their homeland.

Palestinian citizens of Israel have also come under increased pressure with arrests and prosecutions on charges of treason. Changes in Israeli law aiming to make citizenship conditional on perceptions of loyalty to the state are being augmented by legislative bills seeking to severely restrict and criminalize the activities of Israeli human rights defenders.

The current case concerning the four Jerusalemite Palestinians demonstrates the latest step in Israel's campaign to repress independent Palestinian voices. By conditioning Palestinian residency status in the OPT on loyalty to the foreign occupying power and the surrender of basic and fundamental human rights, Israel has again demonstrated an explicit and unapologetic disregard for its obligations under international law and for the principles of democracy.



International organisations, High Contracting Parties to the Fourth Geneva Convention, and the international community at large must take concrete and immediate steps to ensure that Israel does not engage in prohibited practices of deportation and transfer of the civilian population. Impunity for crimes against Palestinians can no longer be tolerated and those found to be responsible for such unlawful actions must be held individually criminally responsible.

Al-Haq calls upon the international community to respect its obligations under international law and to act immediately to prevent these violations.