COMMENTARY | REFUGEES

Israel's Dangerous New Transfer Tactic in Jerusalem

By: Munir Nuseibah · April, 2016

Israel is adept at creating new Palestinian refugees and internally displaced persons, taking advantage of every opportunity to do so and exploiting temporary crises to promote permanent measures. Today, it is using the recent violence in the Occupied Palestinian Territory (OPT) to introduce a dangerous new twist to its long-standing residency revocation policy to force Palestinians out of East Jerusalem.[1]

This new concept –"breach of allegiance" to the state of Israel – is now being used to revoke the residency of Palestinian Jerusalemites, in addition to possible demolition of their family homes. The Israeli government is describing these actions as regular law enforcement measures, but analysis shows that they are part of its ongoing policies of forced displacement, with the aim of making long-term demographic changes and maintaining an overwhelming Jewish majority in Jerusalem.

The Israeli legal system and the military establishment have, since 1948, used several methods to minimize the number of Palestinians in the areas that fall under Israeli control, as I have described in an earlier Al-Shabaka policy brief Decades of Displacing Palestinians: How Israel Does It. These measures have included armed force, restrictions on the civil status of Palestinians, restrictions on building, and dispossession of property (especially real estate), among others forcing the majority of the Palestinian population into becoming refugees or internally displaced.

The latest Israeli shift marks a turning point that is likely to produce thousands of new population transfer victims. It is the third such regulatory turning point in Israel's efforts to "thin out" Jerusalem's Palestinian population, as will be discussed below. Forced

displacement of Palestinians is part of Israel's legal system: This needs to be understood and more forcefully countered by the Palestine Liberation Organization (PLO) and the international community as it is being done by human rights organizations in a new campaign.

Turning Points 1 and 2: "Center of Life"

Israel's ongoing policy of residency revocation is grounded in the increasingly explicit position that the Palestinians in Jerusalem are no more than foreign immigrants who can be easily transferred outside what Israel considers its sovereign territory. After Israel occupied and illegally annexed East Jerusalem in the 1967 Arab-Israeli war, it considered Palestinian Jerusalemites "residents" in Israel, without the right to vote in the Israeli Parliament, so as to avoid adding large numbers of non-Jews to its citizen body. As time passed, the Ministry of Interior, with the consent of the Israeli Supreme Court, developed creative ways to revoke this tenuous status. As a result, since 1967 more than 14,000 Jerusalem residencies have been revoked, most of them after the so-called peace process started in the early 1990s.

Successive Israeli governments have cleverly chosen the timing of new regulatory turning points to broaden the scope of residency revocations, manipulating temporary crises to do so. Two high-profile cases helped shape the pillars of the present residency revocation regime. The first was the case of the peace activist Mubarak Awad, who moved to the United States in 1970, where he married an American citizen. Awad was active in promoting nonviolent resistance before and during the First Intifada, the popular Palestinian uprising between 1987 and 1991. In 1987, he applied to the Ministry of Interior to renew his Jerusalem ID card only to learn that his Israeli residency had been revoked as a result of his stay in the US and the fact that he had received American citizenship. In hindsight, this is especially ironic now that some 15% of the settlers displacing Palestinians in the OPT are Israeli American Jews.

Awad subsequently filed a petition in the Israeli Supreme Court where he explained that his right to live in his hometown should not be compromised as a result of his stay abroad. He argued that Palestinian Jerusalemites should have an irrevocable residency status since they could not be considered mere immigrants to Israel. The Supreme Court rejected his argument and approved the revocation of his residency. In a statement that defies belief, the Court noted that his political views were a consideration that the Ministry of Interior took into account when it decided to revoke his residency.

To support this argument, the ministry had attached the opinion of an Israeli Security Agency (Shabak) official, who went by the alias "Yossi," to the effect that Awad advocated a one-state solution and called for civil disobedience. While the Court did not explicitly ground its decision on this opinion, it frequently referred to it in its verdict. Creating a new precedent, the Court determined that residency status could be denied when a resident's "center of life" was no longer in Israel. Beyond Awad's personal tragedy, what is particularly important is that this legal precedent was subsequently used to deny the residency status of thousands of Jerusalemites.

In 1995, the Supreme Court issued another pivotal verdict against Fathiyya Shiqaqi, the wife of Fathi Shiqaqi, founder of the Islamic Jihad Movement. A Jerusalem resident, Shiqaqi was forced to move with her deported husband to Syria in 1988. Six years later she returned to Jerusalem and sought to renew her ID card and register her three children. The Ministry of Interior rejected her request and ordered her to leave the country. Up to this date, Israel had revoked residencies subject to a written ordinance by the ministry if the resident was absent for seven straight years or received a foreign permanent residency or citizenship. Although Shiqaqi's case did not meet these stipulations, the Supreme Court still approved the revocation of her residency, given that Shiqaqi lived abroad with her husband and her "center of life" was no longer in Israel.

After this second turning point thousands of Palestinian residents who lived outside Jerusalem's municipal borders in the West Bank, Gaza or abroad began losing their residency status. This large number of victims of forced displacement were not necessarily involved in any political activity. The revocation of their residency depended solely on the "center of life" criterion.

These two important cases seem to have been carefully chosen. In Jewish Israeli society, very few would empathize with the plight of an academic calling for civil disobedience or the wife of an Islamic jihadist. However, once these precedents were in place, the entire Palestinian population of Jerusalem came under threat.

Turning Point 3: "Breach of Allegiance"

The latest turning point in Israel's revocation policy has its roots in the revocation by the Israeli Ministry of Interior of three elected members of the Palestinian Legislative Council (PLC) as well as the Palestinian Minister of Jerusalem Affairs, in 2006. The ministry claimed that they had violated their "minimal obligation of loyalty to the State of Israel" by their election to the PLC and their affiliation with Hamas. Israeli and Palestinian human rights organizations were outraged by the introduction of "allegiance" as a new legal civil status criterion, and the case has been pending at the Israeli Supreme Court since 2006. Should the Supreme Court approve this measure, Israeli authorities will be equipped with a new pretext for forced displacement, as Hasan Jabarin, director of the Haifa-based human rights organization Adalah, has stated.

However, the recent outbreak of violence in the OPT provided Israel an opportunity to act without having to wait for the Supreme Court's verdict. As early as October 14th, 2015, the Israeli "Security Cabinet" issued a decision to the effect that "the permanent residency rights of terrorists will be revoked," without defining who was a terrorist. One week later, the Ministry of Interior notified four Palestinians, suspected of committing violent acts against Israeli citizens (three of them were accused of throwing stones), that the minister was considering using his discretionary power to revoke their residencies because the criminal acts they were accused of showed a "clear breach of allegiance" to the state of Israel. In January 2016, the ministry issued official residency revocation decisions against the four Jerusalemites.

Thus, it is no longer enough for a Palestinian Jerusalemite to be actually living in Jerusalem and to maintain his/her center of life in the city. Palestinian Jerusalemites are now expected to commit to the new undefined criterion of "allegiance." The Israeli human rights organization HaMoked, which is based in Jerusalem, has challenged this new policy in the Israeli Supreme Court. However, the Court has not yet decided the case. Similarly, the case of the four Palestinian political leaders whose residency was revoked in 2006 is still pending.

No one knows yet how many residencies have been revoked according to the relatively new criterion of "allegiance," but at least a few more cases are pending in the Supreme Court. HaMoked has made an application based on the freedom of information act to force the Ministry of Interior reveal this information.

It is worth noting that international humanitarian law forbids the expectation of allegiance from a population under occupation. Thus, justifying a residency revocation due to a "breach of allegiance" is counter to international law. Furthermore, there is no justification to revoke the residency of anyone suspected of an act of violence because the Israeli criminal court system already punishes any violent – as well as many non-violent – acts committed by Palestinians.

From a broader legal and historical perspective, Israel should remember that forced displacement is a war crime when implemented in an occupied territory and a crime against humanity if it is widespread or systematic. The Israeli government's latest measures combined with its existing ones would meet the criterion of systematic displacement tantamount to a crime against humanity.

Resisting the Policy of Forced Displacement

The struggle against residency revocations in Jerusalem has mostly taken place in Israeli courtrooms and has, in general, so far been lost. The attempts by several Palestinian and Israeli human rights organizations to argue at the Israeli Supreme Court that Jerusalemites are not immigrants but natives who have an unconditional right to live in their own city have failed. The Israeli Supreme Court has maintained that a Palestinian Jerusalemite's right to live in East Jerusalem should continue to be at the discretionary power of the Minister of Interior. The current right wing government of Israel is using this discretion to fast-track the removal of as many Palestinians from Jerusalem as possible.

In addition, there are no clear counter measures on the diplomatic and international levels against Israel's punitive acts. The PLO has secured the recognition of the State of Palestine by the UN General Assembly, and then joined a number of important human rights and international humanitarian law conventions including the Rome Statute of the International Criminal Court (ICC). However, it is not yet clear what use the State of Palestine is planning to make of this status and these conventions to resist residency revocations in Jerusalem.

Most of the advocacy after Palestine joined the ICC has been focused on crimes that

took place during the war on Gaza, which is obviously important. However, I would argue that the issue of forced displacement is no less important. In Jerusalem and in other parts of the West Bank, forced displacement is part of Israel's legal regime. It is given expression through Israeli laws, administrative orders and court decisions. In the specific case of Jerusalem, Israeli administrative and legal institutions do not even consider international law arguments because Israel considers Jerusalem to be Israeli and not occupied territory.

Israel needs to get a strong message from international legal institutions and diplomatic circles that, regardless of the Israeli definition, the international community considers Jerusalem occupied and the transfer of its civilians as a criminal offense.

Against this background, several Palestinian human rights organizations in East Jerusalem and elsewhere across the West Bank (Al-Quds University's Community Action Center, St. Yves, Jerusalem Legal Aid and Human Rights Center (JLAC), the Civic Coalition for Palestinian Rights in Jerusalem, Badil, Al-Haq and Al-Quds Human Rights Clinic have recently launched a campaign to resist Israel's new transfer policies against Jerusalemites. The campaign began by taking this issue to the UN Human Rights Council to raise it before international diplomats and human rights practitioners.

The campaign has decided to focus on ending punitive residency revocations because this has not yet been approved by the Israeli Supreme Court, making it easier to challenge. If, however, the Court decides that this policy is legitimate, it will be enshrined in the Israeli legal system and will most likely displace many additional Palestinians from Jerusalem.

Palestinian official institutions as well as civil society organizations should work hard against systematic Israeli policies of forced displacement. While Palestinians in general feel that international law has not served the Palestinian cause well, this should not be used as an excuse to give up on the legal struggle. This struggle should not only be aimed at Israel's legal institutions and their discriminatory policies, but it should also be taken to the international level. The Israeli Supreme Court itself might reconsider its endorsement of discriminatory policies if it feels it is under scrutiny.

Whether the pressure of the local Palestinian campaign will reverse the policy of punitive residency revocations remains to be seen. What is certain, however, is that the rights of Palestinians in Jerusalem need much more attention and the issue of residency revocation in Jerusalem needs to be on the agenda. Palestinian lawyers, human rights organizations and officials should take advantage of the momentum offered by Palestine's accession to a number of human rights treaties to increase their pressure on the international community. It is past time for the international community to meet its obligation to take all measures available to end the crime of forced transfer, hold accountable those responsible for such policies and reverse their effects by providing reparations to the victims, including their right to return to their homes. Focused campaigns on single-issue rights may be more effective from an advocacy point of view than general campaigns that aim to raise awareness about multiple injustices.

1. *Al-Shabaka publishes all its content in both English and Arabic (see Arabic text here.) To read this piece in French, please click here. Al-Shabaka is grateful for the efforts by human rights advocates to translate its pieces into French, but is not responsible for any change in meaning.*

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