COMMENTARY | POLITICS

The Escalation of Israeli Collective Punishment of Palestinians

By: Nada Awad · February, 2019

The Israeli authorities forcibly transferred Palestinian Nadia Abu Jamal from Jerusalem in 2017, following the demolition of her family home in 2015. Israel's National Insurance Institute also revoked healthcare and other social security entitlements from Abu Jamal's three children, two of whom suffer from chronic medical conditions. The orders came as punitive measures after her husband, Ghassan, was killed while allegedly carrying out an attack. They demonstrate Israel's expansion of policies that punish Palestinian individuals for offenses they did not commit.

Israel has used collective punishment against Palestinians since the military occupation began in 1967 through home demolitions and psychological and economic warfare against the families of alleged attackers – a violation of international law. While implemented across the Occupied Palestinian Territory (OPT), the Israeli authorities have intensified measures on the families and extended families of alleged attackers in East Jerusalem in particular, and especially since 2015.

For example, Israeli lawmakers have proposed legislation over the last few years that would legalize actions such as those taken against Abu Jamal by officially enabling the state to revoke the permanent residency status of family members of

alleged attackers. In December 2018 the Israeli Knesset passed the preliminary reading of a bill that would allow the forcible transfer of families of alleged Palestinian attackers from their hometowns to other areas of the West Bank. Netanyahu expressed support for the bill, declaring: "Expulsion of terrorists is an effective tool. To me the benefit exceeds the damage. Jurists say it's against the law given how it's defined, and it will surely be a legal challenge, but I have no doubt of its effectiveness."

This commentary tracks the rise in Israeli collective punishment against alleged attackers' families through such acts as forcible transfer, home demolitions, and economic warfare, and suggests possibilities for countering Israel's efforts to inscribe these methods into law to use them to intensify the displacement of Palestinians from Jerusalem.

The Expansion of Forcible Transfer

Forcible transfer has been at the heart of Israeli policy to attain and maintain a Jewish majority in Jerusalem since Israel's de facto annexation in 1967.[1] To reach this demographic goal, Israel implements discriminatory urban planning to limit the growth of the Palestinian population while Israeli law makes it difficult for Palestinians to either stay in or move to the city.

Palestinians living in Jerusalem following 1967 were ascribed the legal status of permanent resident. The Entry into Israel Law makes it easy for the state to revoke their permanent resident status by providing the Minister of Interior the prerogative to rescind the residencies of Palestinians based on the following criteria: living abroad for more than seven years; obtaining foreign nationality or permanent residency abroad; failing to prove "center of life" in Israel; and, since 2018, "breaching allegiance" to Israel.

Such revocation of residency rights is a direct means of forcible displacement, as

Palestinians in this situation are denied even the right to be physically present in Jerusalem. These Jerusalem residency laws also restrict family unification for Palestinian Jerusalem residents with family members who do not hold Jerusalem residency or Israeli citizenship. For Palestinian Jerusalem residents who choose to reunite with family in the West Bank, Gaza Strip, or diaspora, the result is the revocation of their residency rights in Jerusalem, leading to their forcible transfer from the city.

Since the adoption of the 2003 temporary order to the Law of Citizenship and Entry into Israel, family unification applicants are barred from receiving permanent residency status. In other words, a non-Jerusalemite Palestinian who marries a Jerusalemite Palestinian cannot receive permanent residency status but is instead given periodic permits if the Israeli Ministry of Interior accepts the family unification application. The policy places Palestinians in Jerusalem at risk of being separated from their family and often coerces them to move from Jerusalem to live with spouses who are not granted the permits; they subsequently permanently lose their right to live there. There have been 14,500 Palestinian residencies revoked since 1967, with 11,500 of them executed since 1995.

In October 2015, Israeli Prime Minister Benjamin Netanyahu stated that the government was examining the "abolition of family unification" and the "revocation of residency and citizenship status of assailants' families." Such was the case for Nadia Abu Jamal, who hailed from a West Bank village. After she married Ghassan, and following a long family unification procedure, she obtained temporary residency permits to live in Jerusalem that she renewed annually. Following her husband's alleged attack, the Ministry of Interior ordered Nadia to leave the city and moved to reject issuance of any permits to which she might apply. In January 2017, the police arrested Nadia at her in-laws' home, where she had been staying since the punitive demolition of her own home, and forcibly transferred her outside of Jerusalem.

The pattern of the Abu Jamal case has since been repeated, and on a larger scale. The Israeli Ministry of Interior declared after an alleged attack in January 2017: "From now on anyone who plots, plans, or considers carrying out an attack will know that his family will pay a heavy price for his deed." Aryeh Deri, speaking on behalf of the ministry, warned that "consequences will be harsh and far-reaching."

The "far-reaching" consequences were clear in the case of Fadi Qunbar, who was accused of committing a car attack in July 2017. Deri revoked the permanent residency status of Qunbar's 61-year-old mother in addition to 11 family unification permits held by his extended family. Among the 11 individuals to lose their right to live in Jerusalem was the husband of the daughter of Qunbar's half-sister. The expansive scope of Deri's application of the law marked a clear extension in the reach of punitive residency revocation. All of the Qunbar family members are waiting on a decision on whether they will be forcibly transferred from their homes.

The Qunbar case is just one example of how Israel has stepped up collective punishment measures in certain cases, establishing a precedent that paves the way for laws that allow such practices to be used in a widespread manner. In 2016 and 2017, Israeli lawmakers introduced at least four bills that would give legal basis for the revocation of residency permits of both persons who allegedly commit an attack and their extended families. Three of the four bills were amendments to Article 11 of the Entry into Israel Law.

The first, P/20/2463, allows the Ministry of Interior to revoke permanent residency status from alleged assailants and their relatives, in addition to rights related to the National Insurance Law and other laws. "There is no logic behind granting equal rights to residents who act against the state and giving them the ability to enjoy the social benefits which accompany one's being a permanent resident in the State of Israel," the bill stated. Shortly after, bill P/20/2808 stipulates that the

Ministry of Interior can cancel a visa or permanent residency status of "family members of a person who commits a terrorist act or has contributed to committing that act through knowledge, help, encouragement, and support before, during, or after committing the terrorist act." Bill P/20/3994 "gives the Minister of Interior the relevant right to exercise discretion with regard to the committing of terrorist acts." And, as mentioned above, in December 2018, bill P/20/3458, which would allow for the "expulsion of families of terrorists on nationalistic grounds," passed the preliminary reading at the Knesset. The bill would grant the Israeli army the authority to "expel the families of assailants who perpetrate or try to perpetrate a terror attack" within seven days. It calls for the forcible transfer of families of alleged Palestinian attackers in any area of the West Bank.

In addition, in March 2018, the Israeli parliament adopted an amendment to the Entry into Israel Law, allowing for the punitive revocation of the residency status of Palestinians based on "breach of allegiance." Such revocation is prohibited under Article 45 of the Hague Regulations of the Fourth Geneva Convention which explicitly forbids the occupying power from demanding allegiance from the occupied population. Using a criterion as vague as allegiance, Israel can revoke the residency status of any Palestinian in Jerusalem.

Psychological and Economic Warfare

In 2015, the Israeli security cabinet upheld the demolition of an alleged attacker's home as a legitimate punitive practice and called for the prohibition on new construction at the site of the demolished home and confiscation of the property itself. Since November 2014, Israel's High Court of Justice overturned 11 cases in which families from Jerusalem appealed demolition orders, confirming the Israeli military's decision to punitively demolish or seal homes. Out of five houses sealed off and confiscated, three were filled with concrete, making their sealing

irreversible. This leaves the families of alleged attackers homeless and leads to their internal displacement.

These moves have come after a decade-long halt in home demolitions. An Israeli military committee in 2005 concluded that punitive house demolitions had counterproductive results, leading Israeli executive authorities to suspend the practice with some exceptions before resuming in 2014.

Israel also withholds the bodies of Palestinians killed during alleged attacks as a form of collective punishment against families. In 2016, the Israeli parliament adopted an amendment to the Israeli Counterterrorism Law of 2016 that grants the Israeli police this authority. Since October 2015, Israel has withheld the bodies of 194 Palestinians, 32 of whom still remain in Israeli morgues.[2] In many cases, bodies have been conditionally returned to the family for burial following a long legal battle. Conditions required by the Israeli authorities for release often include an immediate burial – thus barring autopsy – that also must take place at night and be attended by a limited number of approved people.

New collective punishment measures have also targeted families' livelihoods. The Israeli Minister of Defense issued several money confiscation orders against families of alleged attackers through the Combating Terror Law of 2016. The minister declared that confiscation is warranted on the basis that the money serves as compensation for the attack. In August 2017, Israeli police forces stormed several houses belonging to families of alleged attackers and confiscated large sums of money. For instance, the Israeli Minister of Defense confiscated $4,000 from the Manasra family after the Israeli army killed Hasan Manasra, 15, in 2015 during an alleged stabbing incident in a Jerusalem settlement. This new collective punishment measure aims at keeping families of alleged attackers in fear of reprisal and targets their basic economic resources.

In another precedent-setting action, the Israeli government filed two civil lawsuits

against the wife and four children of Fadi Qunbar as well as the wife and five children of Misbah Abu Sbeih, who allegedly committed attacks in East Jerusalem in October 2016. The lawsuit against the Qunbar family demanded the family pay $2.3 million, while the lawsuit against the Abu Sbeih family imposed a sum that amounted to over one million dollars. The Jerusalem District Prosecutor's office stated: "This lawsuit, which stems from a terrorist incident in which soldiers were murdered, is designed to recover the expenses incurred in events of this kind to the state's coffers, as well as sending a clear message that the state will also settle accounts on a civil level with the perpetrators of hostile acts." The office also stated: "In light of the fact that the [terrorist] caused the damage, his legal heirs are the ones who need to bear it and indemnify the state for it."

The families of alleged attackers often find themselves isolated from a society that is afraid of retaliation measures. Today, victims of collective punishment by Israel are more and more reluctant to fight or report violations out of fear of further retaliation by the Israeli authorities. Following months and sometimes years of collective punishment, Palestinians often hope that their silence might shelter them from further punitive measures. This fear of retaliation and the attendant erosion of intra-Palestinian solidarity as a result of the expanding arbitrariness of state retaliatory power has deepened Israel's impunity in regard to its violations of the international prohibitions on collective punishment.

Directives of International Law

International human rights law affirms the prohibition of collective punishment. Article 33 of the Fourth Geneva Convention affirms that "no protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited."

Moreover, the forcible transfer of Palestinians is a violation of international law, as Palestinians are considered a protected population. Indeed, international bodies

have repeatedly affirmed the status of Jerusalem as an occupied city, designating the Palestinian people as "protected persons." Article 49 of the Fourth Geneva Convention prohibits the forcible transfer of the protected Palestinian population and considers it a war crime. If used in a systematic and widespread manner, the Rome Statute of the International Criminal Court considers it a crime against humanity.[3] Israel's collective punishment measures also violate the prohibition against the destruction and appropriation of property of protected persons.

Further, the UN General Assembly declared in 2016 that "in addition to amounting to collective punishment, the withholding of bodies is inconsistent with Israel's obligations as an occupying Power pursuant to the Fourth Geneva Convention (articles 27 and 30) and violates the prohibition of torture and ill-treatment."

Israel is also forbidden from attempting to use state of emergency or security rationales to justify the violation of legal norms established by international human rights law. The UN Human Rights Committee has noted that the prohibition against collective punishment is non-derogable, even in states of emergency. Yet Israel consistently uses the security rationale to escalate punitive policies against the Palestinian population with the aim of forcible transfer.

Within the principles of international customary law, third states are responsible for preventing ongoing violations of humanitarian law by investigating, prosecuting, withholding aid or recognition, and cooperating to end the grave breach, including through retaliation measures against the violating states. However, the international community's opposition to Israel's use of collective punishment has rarely risen above the level of verbal condemnation. It is up to Palestinians and the Palestinian solidarity movement to pressure the international community and Israel to discontinue these violations.

Countering Collective Punishment

1.It is imperative for Palestinians and their allies to raise awareness in the media and civil society of Israel's use of collective punishment as a means of forcible transfer, and to highlight this as a war crime and crime against humanity. This can help prioritize the topic on the UN's agenda.

2. Palestinians should also pressure the International Criminal Court (ICC) to add collective punishment to its list of prosecutable crimes. The ongoing ICC preliminary investigation into potential breaches of international law throughout the OPT should be monitored, as it is a test case for international law regarding collective punishment. The naming of collective punishment as a criminal act by the ICC would be a step toward ending Israeli impunity, allowing for prosecution of this violation of basic human rights.

3. It is thus imperative to assist victims in submitting their cases of collective punishment to the ICC section that is dedicated to facilitating the participation of victims.

It is through holding Israeli war criminals to account that policies of collective punishment against Palestinians, leading to their forcible transfer from Jerusalem, will cease.

1. According to the Rome Statute of the International Criminal Court, deportation or forcible transfer of population means "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."
2. Data from Al-Haq monitoring unit, January 12, 2018.
3. *Although the imposition of collective punishment was considered a war crime in the Report of the Commission on Responsibility set up after the First World War and in the Statutes of the International Criminal Tribunal for Rwanda and of the Special Court for Sierra Leone, it was not included as such in the Rome Statute.*

Al-Shabaka: The Palestinian Policy Network, is an independent, non-profit organization. Al-Shabaka convenes a multidisciplinary, global network of Palestinian analysts to produce critical policy analysis and collectively imagine a new policymaking paradigm for Palestine and Palestinians worldwide.

Al-Shabaka materials may be circulated with due attribution to Al-Shabaka: The Palestinian Policy Network. The opinion of individual members of Al-Shabaka's policy network do not necessarily reflect the views of the organization as a whole.