

## Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer



**Date: 16 March 2018**

On 7 March 2018, the Israeli Parliament passed an amendment to the Entry into Israel Law which allows the Israeli Minister of Interior to revoke the permanent residency status from Palestinian residents of Jerusalem, who the Minister deems have ‘breached allegiance’ to Israel.<sup>1</sup> Residency revocation has long been used by Israel as a tool to forcibly transfer Palestinians from East Jerusalem, an occupied territory under international law, to reduce and eliminate Palestinian presence therein and to alter demographic facts on the ground. Since 1967, Israel created and consistently expanded the criteria for revoking the residency status of Palestinians from Jerusalem, of whom at least 14,500 had their residency revoked to date.<sup>2</sup>

The bill (Amendment 30 to the Entry into Israel Law) was introduced following the Israeli Supreme Court judgment of 13 September 2017 on petition HCJ 7803/06. The judgment acknowledged the absence of legal grounds permitting the residency revocation of three Palestinian parliamentarians and a Minister based on ‘breach of allegiance’. However, the Court upheld the revocation of residencies for six months – permitting the illegality to continue – and giving the Israeli Parliament this period of time to change the law in order to legalize residency revocation based on “breach of allegiance”. On 26 February 2018, the Israeli government introduced the bill, which allows the Minister of Interior to revoke the residencies of Palestinians from Jerusalem based on the vague and illegal criterion of ‘breach of allegiance’. In this regard, breach of allegiance was defined to include committing, or participating, or incitement to commit a terrorist act, or belonging to a terrorist organization, as well as committing acts of treason specified in the Israeli Penal Code 1977.<sup>3</sup> Such criteria are vague and could be widely applied to any Palestinian from Jerusalem.

The cementing of the criteria of allegiance into the Israeli law, currently illegally applicable to East Jerusalem – an occupied territory – is contrary to international humanitarian law standards and will expedite the unlawful transfer of thousands of Palestinians from Jerusalem. Article 45 and Article 68(3) of the Hague Regulations and Fourth Geneva Conventions respectively explicitly prohibit the occupying power from demanding allegiance from the occupied population, where the latter holds no duty of allegiance to the occupying power. The recent legislation reiterates Israel’s systematic policy to forcibly transfer Palestinians from Jerusalem, including by means of permanent residency revocations for breach of allegiance, among numerous others.

<sup>1</sup> Knesset, Knesset Passes Legislation Authorizing Interior Minister to Revoke Permanent Residency Status over Involvement in Terrorism, 7 March 2018, available at: [http://knesset.gov.il/spokesman/eng/PR\\_eng.asp?PRID=13803](http://knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=13803)  
The bill and law can be found on the following link (Hebrew):  
<http://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2066200>

<sup>2</sup> Refer to infographic available at: <http://www.alhaq.org/publications/papers/VP-ResidencyRevocation-FINAL-20170612.pdf>

<sup>3</sup> This is based on the unofficial translation of the proposed Amendment No. 30 to the Entry into Israel Law 2018 in its second and third readings at the Israeli Parliament.

## **Entry into Israel Law (Amendment No. 30) of 2018 [5778]**

### **An addition to Article 11 (a)**

#### **“Cancellation of Permanent Residence Permits due to a Breach of Loyalty**

1. The following will be added after Article 11 of the Entry into Israel Law of 1952 [5712], (hereby referred to as the “Main Law”):

11a. (a) Without undermining the provisions of Article 11 (a) (2), the Minister of Interior is entitled to cancel a permanent residence permit which was given according to this law (in this law– Permit), among other things, if it was proven, based on his opinion, that the holder of the permit has committed an act which is considered a breach of loyalty to the State of Israel, provided that this permit would not be cancelled for those who meet one of the below-mentioned conditions except with the approval of the Minister of Justice after consulting with the committee which was established according to Article 11 (h) of the Citizenship Law of 1952 [5712]:

1. At the time of committing that act, a period of more than 15 years has passed since receiving the permit.

2. At the time of his/her birth, one of his/her parents were

carrying a permanent residence permit.

(b) If the Minister of Interior decides to cancel a [permanent residence] permit according to this article’s provisions and sees that, after the revocation of the permit, that person will remain without a permanent residence permit outside of Israel and without being entitled to any citizenship or permanent residence outside of Israel, s/he will be given (parallel to the decision of cancelling the permit) a residence permit in Israel whereas, according to this subsection, whoever resides permanently outside of Israel is not considered without the right to obtain a permanent residence outside of Israel and is not considered without a citizenship.

(c) If a person whose permit was cancelled based on this article filed an administrative petition at the Administrative Affairs Court regarding the decision of the Minister of Interior, the Minister will allow him/her to enter Israel until the final examination of the procedures which emanated from the Minister’s decision, except if was proven that his/her entry into Israel poses a real danger to the security of the state or the well-being of the public.

(d) In this article, a “Breach of Loyalty to the State of Israel” can mean any of the following:-

(1) A terrorist act as defined in the Counter-Terrorism Law of 2016 [5776], or the assistance or incitement of terrorism, or the active participation in a terrorist group or a group which fits the definition of a terrorist group according to the aforementioned law;

(2) An act which constitutes Treason as mentioned in articles 97 to 99 of the Israeli Penal Law of 1977 [5737], or an Aggravated Espionage according to Article 113 (b) of this law”.

### **Amendment of the Addition**

2. In the Addition to the main law, at the end of clause (1) shall come the words “except for a decision made in accordance with Article 11 (a)”.

**Benjamin Netanyahu**  
Prime Minister

**Aryeh Makhlouf Deri**  
Minister of the Interior

**Reuven Rivlin**  
President of the State

**Yuli-Yoel Edelstein**  
Speaker of the Knesset

Under international law, the West Bank, including East Jerusalem, and the Gaza Strip form the occupied Palestinian territory (OPT). Following Israel's occupation in 1967, and its illegal subsequent annexation of East Jerusalem, successive Israeli governments have implemented policies that ensure its domination by working to guarantee a Jewish demographic majority through colonization and the "silent transfer" of Palestinians. Israel articulated a clear government policy that sought to maintain a demographic balance of 60% Jews to 40% "Arabs"<sup>4</sup> within the Israeli declared boundaries of the Jerusalem municipality – which it unilaterally declared as the unified capital of Israel in 1980<sup>5</sup>. Israel has used a variety of methods to reduce the Palestinian population of the city, including:

- Revoking the residency status of East Jerusalem Palestinians;
- Expropriating land and property, denying building permits, and demolishing houses of Palestinians in a systematically discriminatory manner;
- Severely restricting family unification and child registration of East Jerusalem Palestinians;
- Physically isolating East Jerusalem from the rest of the West Bank, in part by building the Annexation Wall;
- Suppressing Palestinian resistance and steadfastness in East Jerusalem through a variety of measures, such as collective punishment, and;
- Creating unbearable living conditions for Palestinians in Jerusalem, including by de-developing the Palestinian economy.

**PUNITIVE RESIDENCY REVOCATION** is the most recent policy aimed at forcibly transferring Palestinians from East Jerusalem. It is unclear how many Palestinians have had their residency status punitively revoked based on "security" pretexts since 1967. The Israeli Ministry of Interior recognizes, however, that 13 residency status were revoked based on the "breach of allegiance" criteria in the last 10 years<sup>6</sup>. Some known cases include:

- June 2006: the residencies of three elected members of the Palestinian Legislative Council and the Minister for Jerusalem Affairs were revoked. A petition (HCJ 7803/06, Abu Arafah et al.) which challenges the authority of the Minister of Interior to revoke permanent residency status was brought. While the case was pending, the previous Minister of Jerusalem and the three parliamentarians were forcibly transferred to the West Bank in 2013. The Supreme Court ruled in September 2017 that the Interior Minister does not have the legal authority to revoke residency based on this ground. On 7 March 2018, the Israeli Parliament amended the Entry into Israel Law, allowing the Minister of Interior to revoke the permanent residency status from Palestinian residents of Jerusalem, who the

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<sup>4</sup> Demographic target for 2020 of 60% Jews and 40% Arabs set by the municipal authorities of Jerusalem in 2009: "Master plan 2000", local master plan for Jerusalem by the district commission. This target has also been adopted by the district master plan.

<sup>5</sup> Basic Law: Jerusalem, the Capital of Israel

[https://www.knesset.gov.il/laws/special/eng/basic10\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm)

<sup>6</sup> CAC submitted a request to the Israeli Ministry of Interior, based on the freedom of information act, inquiring about the number of residencies revoked for "security" reasons, as well as based on the "breach of allegiance" criteria. The Ministry replied on 15/10/2017 that they did not have the number of residencies revoked for "security" reasons. The Ministry provided that 13 residencies were revoked based on "breach of allegiance" in the last ten years.

Minister deems have 'breached allegiance' to Israel.

- January 2016: without awaiting the judgment of the Supreme Court, the Minister of Interior revoked the residency status of four East Jerusalem Palestinians accused of carrying out an attack.

The Israeli Ministry of Interior has revoked several residency status (whether permanent or temporary) from family members of alleged attackers. Several bills have been submitted to the Knesset in order to give legal grounds to the punitive revocation of family members of alleged attackers residency. An example of punitive residency revocation targeting a family member of an alleged attacker is the case of Manwah Qunbar.

- January 2017: The Israeli Minister of Interior punitively revoked the residency of Manwah Qunbar following her son's alleged attack. This case constitutes a very worrying escalation in punitive residency revocation as it marks the first time Israel punitively revokes the residency status of a family member of a Palestinian accused of carrying out an attack.

By granting East Jerusalem Palestinians a "permanent" residency status to live in Jerusalem, entry into and residency in Jerusalem for Palestinian is a revocable privilege, instead of an inherent right. The Israeli Minister of Interior has discretionary powers to revoke residency status. Revocation of permanent residency status is the most direct tool used to forcibly transfer Palestinians from East Jerusalem. This policy which was used by Israel more than **14,500** times between 1967 and 2015 is illegal under international law.

The policy of Palestinian transfer from Jerusalem through revocation of residency was developed in three main phases that gradually broadened the criteria for revoking residencies:

**1967-1995:** An East Jerusalem Palestinian can lose his residency status by: "*settling outside Israel*" for a period of seven years or by receiving the status of resident or citizen in another country.

± **3150** residencies revoked in 28 years

**1995-ongoing:** The aforementioned criteria were suddenly broadened: an East Jerusalem Palestinian now loses his residency status by moving his "*centre of life*" outside Israel even if he was residing abroad for less than 7 years and did not obtain a residency status or citizenship of a foreign country. Israel now considers moving to the rest of the West Bank and the Gaza Strip as residing abroad.

>**11,300** residencies revoked in 19 years

**2006-ongoing:** In addition to the centre of life policy, the Israeli Minister of Interior now also punitively revokes the residency status, including for 'breach of allegiance' of East Jerusalem Palestinians. Consequently, East Jerusalem Palestinians who have never left Jerusalem become vulnerable to residency revocation.

≥ **14** punitive residency revocations (known of) as of February 2017

## **THE ILLEGALITY OF RESIDENCY REVOCATION**

Israel's policy of residency revocation, including through the new criterion of allegiance to Israel, flagrantly violates international humanitarian and human rights law:

- The forcible transfer of Palestinians from occupied East Jerusalem is considered a war crime (under Art. 8 of the Rome Statute for the International Criminal Court) and a grave breach of Articles 49 & 147 Fourth Geneva Convention (GCIV). As the revocation of residency policy forms part of a widespread and systematic forcible transfer policy directed against a civilian population, it may amount to a crime against humanity (Art. 7 Rome Statute)
- The criterion of allegiance to Israel is illegal. International humanitarian law explicitly forbids the occupying power from demanding allegiance from the occupied population (Art. 45 Hague Regulations and Art. 68(3) GCIV)
- Punitively revoking the residency of an East Jerusalem Palestinian based on the alleged offenses of a member of their family amounts to collective punishment, which is prohibited under international humanitarian law. Specifically, Article 33 of the Fourth Geneva Convention strictly prohibits collective penalties and measures of intimidation against protected persons and their property "for an offence [they have] not personally committed."
- The revocation of residency rights in East Jerusalem violates international humanitarian law which stipulates that the occupying power may not act as a sovereign legislator or extend its own legislation over the occupied territory (Art. 43 Hague Regulations; Art. 64, 2 GCIV).
- The revocation of residency violates the basic right of Palestinians to leave and return to their own country. Art. 12 International Covenant on Civil and Political Rights notes "no one shall be arbitrarily deprived of the right to enter his own country."
- The forcible transfer of the Palestinian civilian population often results in the denial of basic human rights including rights to family life, health, education, work, and many other civil, political, social, economic and cultural rights.

The Israeli judicial system allows for unlawful policies and practices to take place with impunity and complete disregard of international law. Accordingly, it is imperative that the international community immediately address Israeli violations.

We thus urge third States to:

- Exert pressure on Israel's Minister of Interior to cease all current procedures of punitive residency revocation, put an end to the illegal demand of allegiance imposed on Palestinians from Jerusalem in order to keep their residency, and reinstate all revoked residency statuses.
- Exert pressure on the Israeli government to reject the newly proposed bill, which would allow for residency revocation on the ground of "breach of loyalty".
- Condemn Israeli policies aimed at forcibly transferring Palestinians in the OPT, specifically East Jerusalem.
- Cooperate with the ICC in its preliminary examination into the situation in Palestine
- Respect obligations under the Geneva Conventions by:
  - o Activating universal jurisdiction mechanisms to provide effective penal sanctions, including prosecuting current and previous Ministers of Interior of Israel, and all others responsible for planning and executing the forcible transfer of Palestinians from East Jerusalem, before their own national courts;
  - o Take practical measures to stop providing assistance or support to Israel until it complies with its obligations under international law.