

The forced displacement of Palestinians has been and continues to be a central IHL/IHRL issue in the Palestine-Israel conflict, not only in the West Bank but in Gaza and Israel as well. The following is a tool intended to summarize the international law applicable to **internal** displacement in these contexts, as well as relevant UN positions.

## OCCUPIED PALESTINIAN TERRITORY

### International humanitarian law (IHL)

#### *Prohibition on displacement*

**Individual or mass forcible transfers of protected persons are prohibited, regardless of motive.** (*Fourth Geneva Convention (GCIV), Art. 49*). In occupied territory, civilians who do not have the nationality of the occupier are protected persons. (*GC IV, Art. 4*)

The element of **force** is not only physical, but also includes the threat of force or taking advantage of a coercive environment. (*ICTY, Prosecutor v. Milomir Stakić, IT-97-24-A, 2006, par. 281*)

State practice underlines the **duty of parties to a conflict to prevent displacement, at a minimum that which is caused by their own illegal acts** (*ICRC Customary IHL (CIHL) Study, Rule 129, Commentary*). A party responsible for conduct prohibited under IHL (e.g. destruction of private property, destruction of infrastructure necessary for the survival of the civilian population, direct attacks on civilians/ civilian objects, indiscriminate attacks) therefore is also responsible for resultant displacement, as it would be in breach of this duty.

All persons displaced in armed conflict have the **right to voluntarily & safely return** to their homes/places of residence as soon as the reasons for displacement cease. (*CIHL Study, Rule 132*)

#### *Exceptions*

An occupying power may only evacuate an area if required by:

- Imperative military reasons (i.e. ongoing hostilities).
- The security of the civilian population in question. (*GC IV Art. 49; CIHL Rule 129A*)

In the case of evacuation, the occupier must:

- Ensure proper accommodation, hygiene, health, safety & nutrition.
- Ensure that family members are not separated.
- Inform the protecting power.
- Return evacuated persons to their homes as soon as military operations in the area cease. (*GCIV Art. 49*)

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### International human rights law (IHRL)

#### *Prohibition on displacement*

**Displacement, regardless of its motive, prima facie breaches a number of rights** contained in international human rights conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Israel is a party. In particular:

**Freedom to choose one's residence.** (*ICCPR, Art. 12*)  
The right of a lawful resident of a territory to choose his/her residence **includes protection against all forms of forced internal displacement.** (*UN Human Rights Committee (UNHRCee), General Comment (Gen.Comm.) 27*)

**Freedom from arbitrary interference with one's home.** (*ICCPR Art. 17(1)*)

**Right to adequate housing.** (*ICESCR, Art. 12*)

All persons must have sufficient security of tenure to be legally protected against forced eviction. States must enact laws providing maximum security of tenure. (*UN Committee on Economic, Social & Cultural Rights (CESCR), Gen.Comms 4 & 7*)

States are obliged to protect these rights against **public and private interference.** (*UNHRCee Gen. Comms 16 & 27; UNCESCR Gen.Comm. 7*)

**Indigenous peoples** in particular should not be forced from their land. (*UN Declaration on Rights of Indigenous Peoples (UNDRIP), Art. 10; Guiding Principles on Internal Displacement (GPID) No. 9*)

#### *Exceptions*

Displacement may only be conducted as an exceptional step, subject to a number of cumulative conditions. These include:

- **Based on law.** Laws regulating eviction should conform to IHRL & strictly control circumstances under which they may be carried out. (*ICCPR, Art. 12(3); ICESCR Art. 4; UNHRCeeGen'lComms 7, 16 & 27; GPID 7(a)*)
- **Justification** on grounds of national security, public order, public health/morals or the rights and freedoms of others (*ICCPR Art. 12(3)*); and promotion of general welfare in a democratic society (*ICESCR Art. 4*)
- **Necessity** of protecting the above in the context of a democratic society.

### **Responsibility for unlawful displacement**

The unlawful transfer of protected persons is a grave breach of the Geneva Conventions. All grave breaches are listed as war crimes under the ICC Statute. Parties to the Conventions are obliged to:

- Enact penal sanctions against such acts.
- Search for persons suspected of carrying out or ordering the unlawful transfer.
- Bring suspects before their courts (regardless of nationality) or hand them over for trial by another party to the Conventions. (GCIV Arts 146 - 147)

- **Proportionality** i.e. displacement must be the most appropriate & least intrusive means to achieve the protective function; and proportionate to the interest to be protected. (UNHRCee, General Comment 27)
- **Consistency with other rights:** in particular, the right to equality, i.e. may not be discriminatory. (ICCPR Art. 12(3); ICESCR Art 4; UNHRCee, Gen.Comms 16 & 27)
- **Respect for rights of affected persons.** (CESCR Gen.Comm. 7; GPID 6-8; UNDRIP, Art. 10)

**All feasible alternatives must be explored in consultation with affected persons**, with a view to avoiding displacement.

Where relocation is to take place, States shall:

- Seek **free, informed consent** of those affected.
- Seek to **fully inform** those affected of reasons & procedures for relocation; **involve** them (esp. women) in planning & managing it.
- Respect affected persons' rights to an **effective remedy** (incl. judicial review & adequate compensation).
- Take all appropriate measures to ensure **adequate alternatives** (housing/ resettlement/ access to productive land) for those unable to provide for themselves.
- Conduct **enforcement**, if necessary, only through competent legal authorities - respecting affected persons' rights to life, dignity, liberty & security.

## **Explanatory note on application of IHL & IHRL**

### **In the occupied Palestinian territory**

Under occupation, **IHL and IHRL apply as complementary bodies of law**. Where a particular rule of IHL is more specific, detailed or protective, it may prevail over the corresponding IHRL rule as *lexspecialis*. This appears to be the case regarding forced displacement, as the **IHL prohibition is far stricter** - taking into account that the occupier may not make permanent changes to the occupied territory and must administer it for the benefit of the protected population, as occupation is in principle a temporary situation. Therefore, IHL cannot envisage exceptions to this prohibition based on the occupier's public interest, development of the territory or consent. Regarding the latter, the Fourth Geneva Convention specifies that its protections cannot be waived. (Art. 47)

### **In Israel**

IHRL applied in Israel's own territory allows for a greater range of exceptions, as a sovereign power has greater scope for decisions about the development of its own territory and to obtain its citizens' free consent. However, displacement is still foreseen as a highly exceptional circumstance subject to strict conditions, in particular: necessity based on an overriding public interest, meaningful consultation of affected persons, and respect for their rights.

### **Minimum standards: the Guiding Principles on Internal Displacement**

The Guiding Principles on Internal Displacement outline the minimum standards applicable to any situation of internal displacement. They are based on existing IHL & IHRL, and do not affect the protection given by other instruments. They reaffirm that:

- All have the right to protection against arbitrary displacement from their home/ habitual residence.
- All authorities and international actors must respect and ensure respect for IHL & IHRL in all circumstances in order to prevent and avoid conditions that might lead to displacement of persons.
- Special protection must be given to indigenous peoples, minorities, peasants, pastoralists and other groups with special dependency on and attachment to their lands.

## VIEWS OF INTERNATIONAL BODIES

### OCCUPIED PALESTINIAN TERRITORY

Concerns over **forcible transfer** in the West Bank have recently been expressed by the **Office of the UN High Commissioner for Human Rights**, as well as the **UN Secretary-General** (OHCHR, [Press Briefing Notes on OPT](#), 27 August 2013; UNSG, [Report to the GA](#), A/67/372, 14 September 2012, par. 55). The Secretary-General stated that: **“Israeli policies resulting in the forcible transfer of civilians within and from the Occupied Palestinian Territory, including the revocation of residency rights of Palestinians from East Jerusalem, evictions, home demolitions and the planned transfer of Bedouin communities, should be terminated immediately. Israeli planning and zoning policies and practices should be immediately modified to ensure adequate housing for all Palestinian residents of Area C and East Jerusalem.”**

Regarding the **planning and zoning regime in the West Bank (including East Jerusalem)**, the **UN Committee on the Rights of the Child (UNCRC)**, the **UN Committee on the Elimination of Racial Discrimination (UNCERD)** and the **UN Committee on Economic, Social and Cultural Rights (UNCESCR)** have also called for this policy to be entirely reconsidered and brought into compliance with international law. UNCESCR also called for **“a stop to the revocation of residency permits of Palestinians living in East Jerusalem”**, while UNCERD called on Israel to **“eliminate any policy of ‘demographic balance’ from the Jerusalem Master Plan and planning and zoning policies in the rest of the West Bank.”** (UNCRC, [Concluding Observations 2013](#), par. 60; UNCERD, [Concluding Observations 2012](#), par. 25-26; UNCESCR, [Concluding Observations 2011](#), par. 17)

In 2004, with particular regard to the Wall, the **International Court of Justice** warned of **“a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall inasmuch as it is contributing... to the departure of Palestinian populations from certain areas.”** The Court found that the construction of the Wall thus **“severely impedes the exercise by the Palestinian people of its right to self-determination”**, and that **by contributing to this demographic change, the Wall and its associated regime violate Article 49(6) of GCIV, along with several Security Council Resolutions.** (ICJ, *Wall Advisory Opinion*, 2004, §122, 133-4)

With regard to the situation of displaced people in **Gaza**, UNCESCR reported receiving **“worrying reports that only a minority of houses and civilian infrastructures, such as schools, hospitals and water plants, could be rebuilt, due to the State party’s blockade on the import of construction materials into the Gaza Strip”**, and called upon Israel to **“fully respect the norms of humanitarian law... rescind its blockade policy and urgently allow all construction materials necessary for rebuilding homes and civilian infrastructures into the Gaza Strip...”** (UNCESCR, [Concluding Observations 2011](#), par. 26)

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With regard to the general legal and institutional context in Israel, the **UN Special Rapporteur on Adequate Housing** observed that **“housing laws and policies appear to have continuously failed to protect and assist Palestinian citizens of Israel ... For example, tenure insecurity, overcrowding, evictions and demolitions are often reported among these groups.”** ([Report on Mission to Israel and OPT](#), 2012, § 7)

With particular regard to the situation of the Arab Bedouin in the Negev, the **UN High Commissioner for Human Rights** was the most recent party to **express alarm about the ‘Law for Regularizing Bedouin Habitation in the Negev’** and call on the government to **reconsider it, conducting a genuinely consultative and participatory process** involving all representatives of Negev Bedouin communities.

According to the High Commissioner, the bill **“seeks to legitimize forcible displacement and dispossession of indigenous Bedouin communities in the Negev”**, and would **“accelerate the demolition of entire Bedouin communities, forcing them to give up their homes, denying them their rights to land ownership, and decimating their traditional cultural and social life in the name of development”**.

She regretted that the Israeli Government **“continues to actively pursue a discriminatory policy of forced displacement against its own Arab citizens”**, and called on the government to **recognize and respect Arab Bedouin citizens’ rights to property, housing and public services, on an equal basis to any other group in Israel.** ([OHCHR Press Release](#), 25 July 2013)

UNCERD has also called for the **withdrawal of the bill**, which it said **“would legalize the ongoing policy of home demolitions and forced displacement of the indigenous Bedouin communities”** and described as **“discriminatory”**. Before the tabling of the legislation, during the planning phase, UNCESCR had earlier recommended that Israel **“ensure that the implementation of the Plan does not result in the forceful eviction of Bedouins”**, and that any eviction be based on **“free, prior and informed consent”**, as well as an offer of **“adequate levels of compensation, in line with the Committee’s general comment No.7 (1997)”**. It further called on Israel to **“officially regulate the unrecognized villages, cease the demolition of buildings in those villages, and ensure the enjoyment of the right to adequate housing.”** (UNCERD, [Concluding Observations 2012](#), § 20; UNCESCR, [Concluding Observations 2011](#), § 27)

UNCERD, UNCESCR and the **UN Human Rights Committee (UNHRCee)** have called for **respect for the rights of the Bedouin population in Israel to their traditional land and livelihoods, as well as access to healthcare, education, water, and electricity.** UNCERD expressed concern about **“increasing difficulties faced by members of these communities**

in gaining access on a basis of equality with Jewish inhabitants”, while UNHRCee held that Bedouins’ access to basic services should be guaranteed “irrespective of their whereabouts on the territory of the State Party”. (UNHRCee, [Concluding Observations 2010](#), § 24; UNCERD, [Concluding Observations 2012](#), § 20; UNCESCR [Concluding Observations 2011](#), § 37)

In response to Israel’s assertion that it does not recognize the Bedouin as an indigenous people, the **Special Rapporteur on the Rights of Indigenous Peoples** noted that *“the grievances of the Bedouin, stemming from their distinct cultural identities and their connection to their traditional lands, can be identified as representing the types of problems to which the international human rights regime related to indigenous peoples has been designed to respond. Thus, the Special Rapporteur considers that the concerns expressed by members of the Bedouin people are of relevance to his mandate...”* ([Case ISR 2/2011](#), §§ 5, 7, 12 & 25)

### The overall situation in the OPT and Israel

The **UNCRC** has urged Israel “to unconditionally commit itself to **refrain from any actions that would further deprive Palestinian and Bedouin families of their land** and of access to safe drinking water, sanitation and food as well as to allow humanitarian agencies unimpeded access to families and children in need without fear of persecution or other recrimination.” The Committee further urged **restoration of land to Palestinian & Bedouin families**, and an immediate **moratorium on demolition of schools in the OPT and Negev**. ([UNCRC, Concluding Observations 2013](#), §§ 29 & 64). The **UN Committee on Elimination of Discrimination Against Women (UNCEDAW)**, noting that forced eviction and house demolitions “negatively impact on the physical and psychological well-being as well as the development and advancement of Palestinian and Israeli Arab women”, called on Israel to refrain from these practices and revoke policies which enabled them, as well as to “[r]eview its housing policy and issuance of construction permits to Palestinians to ensure that Palestinian and Israeli Arab women can enjoy all their fundamental rights and freedoms”. ([Concl. Observations 2011](#), § 29)

**UN Special Rapporteur on Adequate Housing** ([Report on Mission to Israel and OPT](#), 2012, §§ 96 - 99)

*“Throughout her visit, the Special Rapporteur witnessed a development model that systematically excludes, discriminates against and displaces minorities in Israel and which has been replicated in the occupied territory since 1967. In very different legal and geographical contexts, from Galilee and the Negev to the West Bank, she received multiple similar complaints from Palestinians, notably concerning a lack of or discriminatory planning, which seriously hampers the urban and rural development of these communities. As a consequence, a disproportionate number of members of such communities live and sometimes work in structures that are unauthorized or illegal and liable to eviction and demolition... The recent plans for relocating Bedouins in the Negev—inside Israel—as well as decades of promotion of Jewish settlements in the West Bank, including in East Jerusalem, are the new expressions of dispossession of traditional inhabitants and control of the territory. In this same context, the barrier and the blockade of Gaza are the most visible expressions of a process of de facto segregation that seems to be silently pursued in longstanding planning and zoning strategies both within Israel as well as in the occupied territory... It is also important to underline that the spatial strategy of Israel has also been heavily shaped by security concerns... but certainly the **non-democratic elements in Israeli spatial planning and urban development strategies appear to contribute to the deepening of the conflict, rather than promote peace.**”*

**CIDSE** is an international alliance of Catholic development agencies. Its members share a common strategy in their efforts to eradicate poverty and establish global justice. The members of the Working Group on Palestine/Israel – Broederlijk Delen, CAFOD, CCFD, Cordaid, Misereor and Trócaire – are actively involved in the region through partners in Israel and the occupied Palestinian territory. Together with our local partners, we work to reduce poverty and build peace through development and humanitarian programmes.

**Contact:** Deborah Casalin, [deborah.casalin\(at\)broederlijkdelen.be](mailto:deborah.casalin(at)broederlijkdelen.be), +32 (0)2 213 04 32. [www.cidse.org/palestine-israel](http://www.cidse.org/palestine-israel)