



4 October 2016

## **DIRECTIVE ON LEGAL AID FOR PALESTINIAN COMMUNITIES FACING FORCIBLE TRANSFER**

1. The purpose of this Directive is to notify all local and international organizations and individuals, including United Nations bodies, working with Palestinian communities in the occupied State of Palestine, including East Jerusalem, of a clarification of the position of the State of Palestine in regard to providing legal aid to Palestinian communities in Area C.
2. Palestinian Bedouin communities in and around the Eastern Jerusalem Governorate are under immediate threat of mass forcible transfer by the Israeli occupying authorities in violation of international humanitarian law and international human rights law, so as to expand illegal Israeli settlements and to replace indigenous protected Palestinian communities with illegal Israeli settlers.
3. Approximately 7,000 Palestinian Bedouin and herders, of which approximately 60 percent are children, live in 46 communities in the central West Bank. Of these, approximately 3,000 live at the eastern gateway of Jerusalem. This area is located in so-called Area C, which comprises over 60 percent of the West Bank. Area C is an integral part of the occupied State of Palestine. The occupied State of Palestine has been under a prolonged Israeli belligerent military occupation for almost 50 years, and Area C specifically, has been under full Israeli military and administrative control for over 20 years, contrary to the previously agreed upon term of the Interim Agreements ("Oslo Accords").
4. These communities heavily depend on herding as their primary source of income, and as a result of severe restrictions by the Israeli Civil Administration and the construction of the Annexation Wall, the Bedouin communities have been blocked access to critical grazing land and their main access points to market and commerce. In addition, approximately 79 percent of the Bedouin and herder communities in Area C are food insecure, while approximately 85 percent do not have access to the public electricity grid or are connected to the public water network.
5. Due to Israel's discriminatory building permit and planning regime, building permits for Palestinians are typically refused, while Israeli settlers are given *carte blanche* to claim Palestinian private and public property as Israeli state lands for planning, building, and access to basic services.
6. There are currently over 600,000 Israeli settlers living in illegal settlements in the occupied State of Palestine, including East Jerusalem, in violation of international law. This number includes illegal settlers living in illegal colonial installation in violation of international law. Between 2004 and 2015, Israeli settlers have perpetrated over 11,000 attacks on Palestinians and Palestinian property.<sup>1</sup> Israel illegally confiscates Palestinian land while seeking to fully

<sup>1</sup> <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C70045954C38BF6985257EB2006CC7D1>



---

annex it, uproots thousands of trees and damages agricultural lands, and forcibly transfers the Palestinian civilian population to make way for illegal Israeli settlements and settlers to expand and impose its illegal settler-colonial policies.

7. Israeli occupying authorities justify the mass forcible transfer policies, or what they call “relocation” plans, through claims that these Bedouin and herder communities: (1) live in abysmal living conditions and their transfer will improve their quality of life; (2) that the communities do not have title to the land; and (3) the communities violate Israeli zoning and permit requirements by building without permits. In reality, these forcible transfers are part of Israel’s systematic planning policies to forcibly transfer indigenous Palestinian communities and replace them with Israeli settlers. Article 49 of the Fourth Geneva Convention of 1949 unequivocally states that forcible transfer is strictly prohibited, “regardless of their motive.”<sup>2</sup> Between 1997 and 2007 there have been three major waves of forcible transfer of the Bedouin and herder communities.
8. One lesson learned was of the illegal Israeli forcible transfer of Palestinian families from the al-Jahalin tribe in the Eastern Jerusalem Governorate, in which 150 families were forcibly transferred to Al-Jabal, an area adjacent to a garbage dump site near the Palestinian town of Al-Ezariya (Bethany)<sup>3</sup>. The Israeli occupying authorities replaced them with the “06” and “07” sections of the illegal Israeli settlement of Ma’ale Adumim.<sup>4</sup> This is in addition to the existing Israeli occupying authorities’ approved forcible transfer plans to forcibly transfer more communities to Nuwa’ameh, Fasayel, and Jabal West.
9. The Palestinian communities have outright rejected any plans to relocate, however Israel’s coercive measures, including home demolitions, destruction and seizure of humanitarian assistance, continual harassment and intimidation by Israeli occupying forces and settlers, and cutting off or refusing to provide basic services such as water, electricity, and education, has created an extremely coercive environment. Coercive measures intended to forcibly transfer a civilian population within occupied territory amounts to war crimes and constitutes a grave breach of international humanitarian law, including Article 147 of the Fourth Geneva Convention of 1949.<sup>5</sup>
10. These communities have requested the protection of various international and local actors to intervene on their behalf to put an end to Israel’s illegal policies and coercive measures that have rendered them more vulnerable, and affirm the communities’ wish to either return to their lands in al-Naqab, or stay on their current land temporarily until they are able to exercise their right to return to their original lands.

---

<sup>2</sup> Article 49, Fourth Geneva Convention of 1949: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

<sup>3</sup> <http://www.unrwa.org/userfiles/2013052935643.pdf>

<sup>4</sup> <http://www.unrwa.org/userfiles/201305293270.pdf>; <http://bimkom.org/eng/wp-content/uploads/jahalin/index.htm>

<sup>5</sup> Article 8(2)(b)(viii), Rome Statute of the International Criminal Court; Article 49 of the Fourth Geneva Convention of 1949; see also Article 85(4)(a) of the 1977 Additional Protocol I; Article 147 of the Fourth Geneva Convention of 1949; Report by the UN Secretary General to the UN General Assembly, A/67/372, 14 September 2012, para. 37.





11. Many organizations have intervened to provide legal aid. In the case of actors intervening to provide pro bono legal aid to these communities, the Government of the State of Palestine and the communities are not consulted and/or are not aware of the type of legal action undertaken by these legal actors, thereby compromising the principles of community engagement, informed consent, oversight, and accountability.
12. In representing the community, legal aid has a professional and ethical duty to provide informed understanding to the clients' legal rights and obligations, which is also enshrined in the International Principles on Conduct for the Legal Professional of the International Bar Association.<sup>6</sup> Moreover, in providing legal aid or advice, the legal aid actors must also receive informed consent by the community based on a number of considerations, including legal, economic, social and political, as well as any other factors relevant to the community for that community to provide informed consent. These factors also include political implications outside the scope of the legal aid these actors purport to provide to the communities, such as negotiating and/or providing for the facilitation of forcible transfer of these very same communities.
13. Principle 5 of the UN Guiding Principles on Internal Displacement states: "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons."<sup>7</sup> Further, Principle 7(c) stipulates that "free and informed consent" must be given by those communities.<sup>8</sup>
14. Moreover, informed consent built upon coercion, threat, the threat of force, the use of force, or any other coercive measures in violation of international law, is not considered informed consent.
15. It has been observed and noted by the Government of the State of Palestine that in some cases, individuals contracted by organizations and/or the organizations themselves, have provided legal aid to negotiate and/or mediate on behalf of these communities to reach a settlement agreement for their own transfer. The negotiations in these instances took place in the course of legal aid provision and ultimately, for the facilitation of their forcible transfer. By reaching such an agreement, it is understood that these legal aid actors have in fact facilitated the forcible transfer of these communities. Such negotiations, mediations, settlement agreements, or facilitations are not only illegal under national legislation, but constitute grave breaches of international humanitarian law. Further, they are in violation of the International Principles of Conduct for the Legal Profession and contradict the Guiding Principles on Internal Displacement.

<sup>6</sup> International Bar Association, *International Principles of Conduct for the Legal Profession* (28 May 2011).

<sup>7</sup> Principle 5, United Nations Guiding Principles on Internal Displacement, adopted by the General Assembly Resolution A/RES/60/1.

<sup>8</sup> *Id.* at Principle 7.



- 
16. The negotiation of land, land boundaries, and any other final status matters are powers reserved to the State of Palestine. The negotiation of communities' rights are also within the power of the State, not the occupying power nor the power of a third party legal aid actor not designated or authorized by the State of Palestine.
17. Further, the facilitation of forcible transfer constitutes the facilitation of a war crime, which is a grave breach of international humanitarian law.<sup>9</sup> Therefore, any organization, individual, or otherwise actor found to facilitate and/or fund the forcible transfer of any Palestinian community without the informed consent of the community and the consent of the State of Palestine will be found in violation of Palestinian and international law.
18. This Directive is intended to clarify the position of the State of Palestine and the Palestine Liberation Organization on this matter. Please note:
- a. International and local non-governmental organizations, including United Nations bodies, that support these initiatives are in violation of their own mandates to provide protection to protected persons;
  - b. The State of Palestine and the Palestine Liberation Organization do not recognize the authority, designation, or delegation of any legal actor purporting to represent these communities without explicit, written informed consent by the relevant body within the State of Palestine;
  - c. Any legal actor (individual or organization) found to negotiate or mediate or assert to represent a community to ultimately facilitate their transfer, whether or not the community is offered compensation, will be found in violation of Palestinian and international law, and will be held accountable as assisting in the commission of a war crime; and
  - d. Any organization that provides material and/or non-material support, including financial resources, to such legal actors, including providing resources to other organizations or individuals to carry out such activities, will be found in violation of Palestinian and international law, and will be held accountable.
19. For further clarification of this Directive, the Palestine Liberation Organization will hold a Town Hall meeting on 17 October 2016 at 1 pm to discuss and answer any questions on the matter. Venue to be announced in follow-up correspondence.

Dr. Saeb Erekat  
Secretary-General  
Palestine Liberation Organization

---

Article 25(3), Rome Statute of the International Criminal Court.<sup>9</sup>