

## Collective punishment

### The case of occupied East Jerusalem



1. As a Palestinian network of human rights organizations dedicated to the promotion and protection of human rights in East Jerusalem, the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ) is deeply concerned by the ongoing policy of collective punishment employed by Israel as a formal punitive measure. Under cover of security necessities and the need to deter palestinians from committing attacks, Israel has enforced illegal practices that humiliate and cause difficulties to innocents people.

- **Definition**

2. Collective punishment is inflicted to people whose connection with the attack is nowhere to be found; family, but also the extended family, the neighborhood and even the entire community or population. The deterring effect of collective measures is far from being proven, it has even been claimed quite the opposite: punishing people on behalf of someone else's action nurtures frustration and a feeling of injustice, inciting hatred and hunger. Roots of Palestinian attacks shall not be neglected, Israel and its unlawful policy of collective punishment is responsible for civil disorders

3. In order to be considered as a collective punishment, a punitive measure must endorse two cumulative requirements, as to say:<sup>1</sup> **tangible connection** between an offence and the punitive measures, **and hardship endured (by others than the offender) must be substantial**, not merely incidental. When the punitive measure following an offence is **substantially causing hardship to someone whose connection with the wrongful act isn't established**, it is a collective punishment.

4. The ICRC (International Committee of the Red Cross) defines collective punishment under international law and widens the scope of applicability stating that *'No one may be convicted of an offence except on the basis of individual criminal responsibility, and the prohibition of collective punishments is wider in scope because it does not only apply to criminal sanctions but also to "sanctions and harassment of any sort, administrative, by police action or otherwise"'*<sup>2</sup>.

- **Collective punishment in East Jerusalem**

**5. The construction of the apartheid wall** officially started during the 2<sup>nd</sup> intifada, allegedly for "security measures", punishing the Palestinian population in response to the attacks committed in Israel. But the wall was **planned to de-facto annex some 17 percent of the West Bank, leaving 220.000 Palestinian Jerusalemites on the Israeli side, which is hardly consistent with Israel's security logic**.<sup>3</sup> Under cover of security, Israel is creating ghettos, surrounding villages, and restricting **freedom of movement**.

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<sup>1</sup> *Israeli's home demolitions policy: Collective punishment in violation of international law, Shane Darcy 2003, Al-Haq, West Bank affiliate of the International Commission of Jurists*

<sup>2</sup> *ICRC Rule 103. Collective punishments are prohibited.*

<sup>3</sup> *B'Tselem, a wall in Jerusalem, 2006.*

6. Because of its proximity to Jerusalem, the importance of Abu Dis had greatly increased before the Wall (mid-2003), with a good economical situation and about 4,000 students receiving their higher education at the Al Quds University campus in the village<sup>4</sup>. Increasing until 2003, the land has depreciated by 60 percent in less than one year and people started to move out. Local shops depended on Jerusalem's customers up to 60 percent of their monthly income. The wall also increased the time to get to Jerusalem from 10 minutes walk to more than one hour drive. The barrier separates Abu Dis from Jerusalem, and divides approximately 35 families whose relatives reside on the other side of the barrier.

7. After 1967, Israel expanded east Jerusalem's boundaries and absorbed half of Al Walajeh, but most residents are still classified as West Bankers, not Jerusalemites. The village is nowadays partly in Bethlehem governorate, partly in Jerusalem municipality. Palestinians are trapped, surrounded on most parts by the separation barrier, which cuts off many villagers from accessing their agricultural lands and has made it harder for Palestinians to reach farm land, but also schools and medical care.

8. Restricting freedom of movement is a violation of international Human Rights law, violating as well the right to Property, the right to Health, the right to Education, the right to Work, the right to Food and Water, the right to Freedom of Religion. According to the ICJ advisory opinion (2004), "the construction of the wall and its associated regime are contrary to the relevant provisions of the Hague Regulations of 1907 and of the Fourth Geneva Convention". The construction of the wall is in breach of the International Covenant on Civil and Political Rights (ICCPR, 1966), and the International Covenant on Economical, Social, and Cultural Rights (ICESCR, 1966), both of which Israel has signed.

**9. Restriction of freedom of expression** is a measuring device of the level of democracy for states. The right to demonstrate and to protest is the ineluctable consecration of this freedom. Freedom of expression is also closely tightened to the right of association, with closures of Palestinian NGOs and public institutions.

10. On the 14th of March 2017, Israeli police and intelligence forces stormed the office of the Map and GIS Department in Dahiat Al Bareed Junction, North of occupied East Jerusalem, and ordered its closer for 6 months. The office files and computers were confiscated and the director of the department was taken for interrogation for 5 hours.<sup>5</sup> The arbitrary closure of the department office is not an isolated incident. Since August 2001, Israeli authorities have permanently or temporary closed at least 32 Palestinian public institutions and NGOs in occupied East Jerusalem.<sup>6</sup>

11. During the march from the Mount of Olives to Saint Ann's church on the Via Dolorosa for the Palm Sunday procession, flags are usually waved by the people who came to Jerusalem for the event. The 9<sup>th</sup> of April 2017, among the multitude of flags present, Israeli police stopped people from bearing Palestinian flags while flags from all over the world were raised without bringing any issue. Since the Oslo Accords in 1993, the Israeli ban of the Palestinian flag has been abolished. According to Israeli police

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<sup>4</sup> *Abu Dis, UNRWA Report on the West Bank Barrier March 2004*

<sup>5</sup> *Israel Police Closed Map and GIS Department for 6 months, CCPRI, March 2017*

<sup>6</sup> *Israel orders Jerusalem office of Palestinian Health Union closed for one year, CCPRI 2015*

statistics, police arrested 96 Israeli citizens on suspicion of waving the Palestinian flag between 2011 and 2015.

12. On the 15<sup>th</sup> of July 2013, the Israeli police forces attempted to disperse the demonstration against Praver Plan at Damascus gate (Jerusalem Old city) with violent means after the demonstrators refused to leave, including beating the protestors with batons and charging on horses (police mounted). Israeli mounted police officers trampled Palestinians, men, pregnant women and children and even beat up some paramedics who were at the scene. Approximately 60 people were injured during the protest, 12 of whom were transferred to hospitals in East Jerusalem.

13. In 2009, Israeli Police and Border Police shut down Jerusalem opening of Palestinian literature festival, using security excuses and alleged links to the Palestinian Authority to prevent Palestinian cultural activities in Jerusalem. Banned activities are still a major issue today in East-Jerusalem, in Silwan earlier this year, a Palestinian peaceful cultural event was forcibly shut down for no accurate reason.

14. The right to protest is a Human Right protected through the universally accepted freedom of expression, as it is enshrined in Article 21 of the International Covenant on Civil and Political Rights (1966), which Israel signed on 19 December 1966.

**15. Restrictions of religious practices**, by denying access to Holy places and the right to religious demonstrations.

16. On the 19th of April 2014, Israeli police set up blockades around the Old City of Jerusalem and the Church of the Holy Sepulcher preventing thousands of worshippers from reaching their holy sites during Easter, including East-Jerusalem Palestinians yet holding Jerusalem residency or permits. Furthermore, Israel issued a number of permits for Christians to enter Jerusalem during Easter but then imposed a week-long closure on the occupied territories for the Jewish Passover holiday, which coincided with Easter celebrations, thus deeming all permits void for this week. during Passover, when Jewish worshippers flock to the Western Wall, even Palestinians from east Jerusalem need a permit to enter its walled Old City, site of the wall and the church of the Holy Sepulcher.

17. "Israeli Independence" day is also known for Palestinians as the commemoration of some 750,000 Palestinians expelled from their lands on 1948, called the "Nakba" or catastrophe. During the independence day this year, groups of extremist Israelis under armed Israeli police escort took to the Al-Aqsa Mosque compound, known as the 3<sup>rd</sup> Holiest site for the Muslim population which is the majority religion of Palestine. Many Israelis entered the compound while some of them were doing the military salute to humiliate once again the Palestinian population. Muslim worshippers, despite the fact that an agreement signed between Israel and the Jordanian government prohibits non-Muslim worship at the compound.

18. While Palestinian Christians and Muslims from the West Bank and Gaza have to apply for permits to enter Jerusalem for their religious celebrations, Israeli Jews (and any Jew) can participate in their religious celebrations in occupied East Jerusalem without any restriction. Even the Israeli High Court of Justice ruled this month that Palestinians' rights are being violated by checkpoints and other restrictions that annually create obstacles to worship. Article 18 of the UDHR is protecting freedom of religion stating that "Everyone has the right to freedom of thought, conscience and religion; this right

includes [...] freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

**19. The sealing of entire villages and flying checkpoints undermines economy and medical aid; it prevents movements of a population and goods,** transforms villages in ‘large prisons’. Israel has set checkpoints around Jerusalem, but also in the West Bank, preventing movement on roads which don’t lead to Israel, but rather separate Palestinian cities and towns. “Flying checkpoints” are also popping up at anytime, often in response to violence incidents. Between 2000 and 2006, at least 68 Palestinian women gave birth at Israeli checkpoints, according to the Palestinian health ministry. Of these, 35 women miscarried, and five died in childbirth<sup>7</sup>.

20. **Police closed off the neighborhood of Sur Baher** after a stone-throwing alleged attack led to the death of an Israeli driver on the Jewish New Year on the 14<sup>th</sup> of September 2015. The Palestinian neighborhood of Sur Baher, located south of occupied Jerusalem, got closed, surrounding 27,000 residents. IDF settled **concrete barriers at the entrances, leaving only one route** for its residents, where a checkpoint manned by abusive Israeli soldiers regularly mistreats anyone who passes by, on foot or in a vehicle. Entering or leaving the village was then taking one hour, while Israeli soldiers searched meticulously every single person. In addition, the public transportation company is at risk to close because the cost of “loading passengers increased and there is no longer a large number of trips to make up for it”.<sup>8</sup>

21. Following the alleged attack at the Har Nof synagogue in which two attackers from Jabel Mukaber shot four Jewish men at prayer and a Druze policeman who had arrived at the scene. **The neighborhood of al-Ram (and others) was sealed off**, affecting also the residents of the nearby Qalandia refugee camp on their way to and from Ramallah and Jerusalem. In addition to closing the northern entrance to the town with concrete blocks, the **closure affects the revenue of businesses** located along the road to the northern entrance. The Israeli authorities also closed the road adjacent to the town, thereby creating a **suffocating traffic jam** that takes people **two hours to get out of**.

22. A city closure is considered as “indiscriminate and disproportionate,” according to the Adalah NGO for Arab-Israeli legal rights. The cost to an innocent population is outweighing the “benefits” a closure might have. The sealing of entire cities undermines economy and medical aid; it prevents movements of a good and people, in violation of the freedom of movement.

**23. In East-Jerusalem, the collection of taxes** is entirely under Israeli control. Often, Israeli police have taken advantages of this economical power to challenge Palestinians’ economical life.

24. After the attack in January 2017, traffic inspectors issued an unprecedented amount of tickets to drivers in Jabal al Mukabir, creating traffic jams, and shop keepers saw some of their products confiscated and a disproportional number of tax collectors visited the neighborhood to demand immediate payment.

25. On the 3<sup>rd</sup> of October 2015, following an attack in the Old City, a Café received an order to close for days after the Israeli police stormed the place and asked for customers’ IDs. After 10 days, the owner was able to re-open but faced an increase harassment by the Municipality, and suddenly fines

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<sup>7</sup> *Israeli jailed over baby tragedy, BBC news, 2008 (data of the Palestinian Health Ministry)*

<sup>8</sup> *director of the company Sur Baher Buses for Public Transportation, Raafat Nimr*

without notice (5,000 shekels - about 1,300€) for the violation of the prohibition to smoke in public places.<sup>9</sup> Though, the prohibition had never been implemented for the past 3 years and the owner never received any warning.

26. Article 52 of the 4th Geneva Convention prohibits the enforcement by the occupying power of “measures which [have] the effect of creating unemployment artificially or of lessening the possibility of finding work”. The right to work is also protected by the CESCR which encourages the State parties to take appropriate steps to safeguard this right, triggering therefore the Third State Responsibility.

**27. Punitive demolitions of Palestinians homes:** 23 demolished with 2 nearby apartments rendered uninhabitable, and 5 punitive sealing have been enforced in 2016.<sup>10</sup> Houses demolition is an administrative procedure **carried out without trial and without proof** in court of the guilt of the person because of whom the action is taken.

28. After Abu Sbeih carried out an alleged drive-by shooting near an Israeli police station, in the occupied Jerusalem **neighborhood of Sheikh Jarrah** in October 2016, Israel’s army targeted the family, **their homes and stores, coming repeatedly**, causing **serious property damage**, taking measures and photos of the interior and exterior of the home, in order to demolish it. The soldiers also threaten the family to revoke their residency permit. The family appealed against an Israeli court’s order to demolish but the court rejected the appeal and gave them 48 hours to evacuate the house before its demolition under the pretext of “detering attacks carried out by Palestinians”. On the 22th of December 2016, the Israeli army **punitively demolished the inner walls and sealed off the home** on the seventh floor of the nine-storey building. The man's family, **a mother and five children were displaced from the home**, while his parents, who owned the house, were also affected. Furthermore, following confrontations, Israeli **forces shot and killed a Palestinian teen** during the home demolition.

29. Following the alleged attacks of Ghassan Abu Al-Jamal on a synagogue in November 2014 in **Jerusalem’s Har Nof neighborhood**, **IDF blew up two housing units in eastern Jerusalem and sealed off another** “as collective punishment for attacks perpetrated by relatives of the people living in the three homes”<sup>11</sup> The **blasts also destroyed two adjacent apartments** that were home to 11 people, including 7 children. On the 4<sup>th</sup> of January 2016, five family members of Abu al-Jamal who lived in the home, including three children, were displaced by a sealing, which affected the first floor of a three-storey building. This was the **third time that properties belonging to Abu Jamal's family have been punitively demolished or sealed off**.

30. Article 46 of the Hague Regulations provides that private property cannot be confiscated. The protection is echoed in article 53 of the Fourth Geneva Convention, which prohibits the destruction of property of the occupied population. Furthermore, punitive home demolitions amount to collective punishment, constituting a war crime and triggering responsibility of perpetrators.

**31. Israeli authorities arbitrarily detain peaceful Palestinian demonstrators, including children.** Detentions are called arbitrary when there is no evidence that the person might have committed a legal offence, or when the detention takes place without proper due process of law.

<sup>9</sup> *East Jerusalem, exploiting instability to deepen the occupation, Al-Haq, 2015*

<sup>10</sup> *B'Tselem, 2016, Israel demolish record number of West Bank home, 14th of February 2017*

<sup>11</sup> *B'Tselem, Demolition of alleged attackers’ family homes – government policy of vengeance against innocents continues with High Court approval, 7 Oct 2015*

32. Along with taking the phones of the entire family, destroying the computers, interrogated the 10 years old younger brother, leading raids at night, and other measures of harassment, Moayyad Hammad received seven life sentences in 2003. His son, Hamza Hameed, has been interrogated for 22 straight days, for eight of which he was prevented from meeting with an attorney, and was released home without charges in 2015. In 2016, this time straight to Ofer Military Prison, with no real need for interrogation. The officer in charge of the operation reportedly told the mother “that her son should be in prison since his father killed a number of soldiers”.

33. November 2014, Israeli forces arrested 10 of the Moussa Darwish’s relatives and released 8 of them the following day. However, Darwish’s friends and relatives had their three vehicles "ambushed" by Israeli forces who had set up a flying checkpoint at the entrance to the city.

34. Article 9 of the UDHR (Universal Declaration of Human Rights) states that “no one shall be subjected to arbitrary arrest, detention or exile”; reaffirmed in article 9 of the ICCPR. Israel is in breach of international human rights law for the arbitrary deprivations of liberty enforced. In addition to the right to a fair trial and other due process guarantees, including the principle of individual responsibility and the presumption of innocence, several human rights are negatively affected by such practices, according to articles 11, 12, 14 and 17 ICCPR; as well as articles 71-73 GC IV.

**35. Punitive residency revocation** of the “permanent residency” status, attributed by Israel in 1967 ( following the 6-day war), according to a census to count Palestinians living in Jerusalem at that date. The status gives them the right to stay in Jerusalem as a foreigner, not being considered either Palestinian, or Israeli and gives the right to apply for social benefits. Palestinians absent from Jerusalem at that date no longer have the right to stay in Jerusalem, except by applying for permits through a long and complicated process, often denied.

36. In early January 2017, after a Palestinian from Jabal al Mukaber who allegedly attack a group of soldiers in the illegal East Talpiot Jewish settlement, killing four and injuring 13, Israel took collective measures against the Al-Qunbar family and the village. Among others measures, 12 family members lost their Jerusalem permits, "suspected of having connections to ISIS" with no proofs, being therefore punished for someone else’s action<sup>12</sup>.

37. In November 2014, Ghassan Abu Jamal allegedly attacked Kehilat Bnei Torah synagogue in the Jerusalem neighborhood of Har Nof. Nadia Abu Jamal who was married to Ghassan Abu Jamal, was living in her home in Jabal al-Mukabber with temporary stay permits she received as part of the family unification procedure the couple entered in 2009. The day after the attack, Nadia received notice that her permit was revoked and that her three children’s state health insurance was cancelled, though they actually have residency status in East Jerusalem. The family has been deported to the Palestinian territories and will no longer be eligible for financial assistance from Israel or any state benefits, due to the action of one member of the family, denying therefore the right of residence in Jerusalem for Jerusalem-born children, in violation of Israeli law. Thus, she has been condemned to go on living without status or rights because of someone else’s action even though she met all the requirements to be granted this status.

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<sup>12</sup> *Concern about collective punishment: new measures targeting the residency rights of East Jerusalem Palestinians, OCHA oPt, Avril 2017*

38. Israel's 1952 Entry into Israel law, which allows the revocation of the Israeli citizenship from individuals who "committed an act of disloyalty towards the State of Israel", has been used as a legal ground to enforce residency permits revocation. However, the Law and regulations do not address the possibility of revocation of residency permits on grounds of "Breach of Allegiance", only citizenship. Furthermore, East-Jerusalem is part of the Occupied Palestinian Territories (OPT) and therefore, is not subjected to Israeli Law. The criterion of allegiance is illegal according to article 45 of the Hague Regulations and article 68.3 of the 4th Geneva Convention (i.e. according to International Humanitarian Law) which explicitly forbids the treatment of an occupied population as if it had a duty of allegiance to the occupying power. Revoking the residence of East Jerusalemites on those grounds is in breach of the right to a nationality, the prohibition on the arbitrary deprivation of nationality, and the antidiscrimination principle.

39. Arguing that the **return of attacker's bodies** might encourage prospective attackers to look for glory, Israel launched a body ceasing policy. Getting bodies back is important to Palestinians, who bury the bodies following rituals and need the funeral to mourn for the deceased person. In May 2016, the High Court of Justice ruled in favor of the return of deceased of bodies. Nevertheless, the State of Israel continues to withhold them, and imposes difficult restrictions; no funerals are allowed unless the family register with the Israeli authorities to do so, the burial has to take place within one hour after release whatever the time of the release, no autopsy may be performed, and families must pay a 40,000 NIS guarantee (EUR 9,500) to ensure that they abide by the conditions. Furthermore, the deceased from Jerusalem, have to be buried outside the city.

40. Tha'er Abu Ghazaleh's family<sup>13</sup> has been waiting on their relatives' body for over 284 days. Tha'er is one of the 13 Palestinians killed in October 2015 by Israeli soldiers, police, and settlers during extrajudicial killings of civilians posing no immediate danger (Amnesty International, Human Rights Watch). Israeli authorities kept the body in custody, refusing to hand over the deceased body for funerals

41. In 2005, the state retracted its consent to return 2 Palestinian bodies (Adel and Imad Awadallah) hold since 1998, as Israel notified that following the capture of soldiers, it would continue to **withhold the bodies in order to facilitate negotiations for the captives' return**. By refusing to return the bodies because of captured soldiers, even if the family and friends of the attackers have no connection with the captivity, Israel once again takes for responsible innocent people on behalf of other's actions. The relatives are unfairly punished because of the ongoing policy of collective punishment.

42. After the truck attack on January 2017, public Security Minister Gilad Erdan assured Israel would never return the body. The Police also **prevented Qanbar's family from setting up a memorial tent** outside the family home in Jabal Mukaber, and **barred the family from receiving mourners** at their home, where a heavy police presence remained in place for days.

43. Human Rights and IHL set protections over the bodies and the funerals, enlightening freedom of religion and right to culture. Both Article 15 of the ICESCR and Article 27 of the UDHR recognize the right of everyone to take part in cultural life. ICCPR Article 27 also states that "minorities shall not be denied the right ... to enjoy their own culture." According to General Comment No. 21, clarifying Article 15 of the ICESCR, "culture is a broad, inclusive concept encompassing all manifestations of human existence." It goes on to say that culture "encompasses, inter alia, [...] religion or belief systems, rites and

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<sup>13</sup> Update on Israel's restrictions on the return of bodies of palestinians killed by the israeli forces, CCPRJ, 2016

ceremonies.” According to International Humanitarian Law, rule 114 ICRC, “parties to the conflict must endeavor to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.”

- **Legal analysis**

**44. - Collective punishment under international humanitarian law** is strictly prohibited both under international treaty law and international customary law. This practice has been codified by the international community through different texts and has been commonly defined as a war crime:

45. Article 22(2)(a) of the 1991 ILC (International Law Commission) Draft Code of Crimes against the Peace and Security of Mankind, states that “collective punishment” is an **exceptionally serious war crime** and a **serious violation of the principles and rules of international law applicable in armed conflict**. **The qualification of collective punishment as a war crime is affirmed by the ILC in 1991 and 1996 which demonstrates the rejection of this mean or method of warfare, and marks the will of the international community to ban states to implement such measures.**

46. Article 50 of the 1907 Hague Regulations which occurs in time of war and/or occupation, provides: “No general penalty, pecuniary or otherwise, shall be **inflicted upon the population on account of the acts of individuals** for which they cannot be regarded as jointly and severally responsible.” **The Hague Regulations are laying down international customary law and are as such bounding for any state. East-Jerusalem is recognized by the international community as under occupation, hence the Hague Regulations of 1907 apply to the Palestinian population of Jerusalem.**

*“The Mission’s report notes that the imposition of **collective penalties** **“amounts to measures of intimidation and terrorism”**. It is not by accident that the rules against collective punishment, intimidation and terrorism appear within the same article of the Fourth Geneva Convention. “<sup>12</sup>*

47. Article 33, first paragraph, of the IV Geneva Convention of 1949 provides that: “No protected person (civilians, detained persons, persons not taking part in hostilities) 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.” **Israel is a member state of the United-Nations and accepted as such the obligations of the Geneva Conventions. The 4<sup>th</sup> Geneva Convention applies to occupations, so it is to be enforced in Palestinian Territories including occupied East-Jerusalem.**

**48. - Protections against collective punishment under international Human Rights law** are recognized as **universal and inalienable** and apply therefore on all Human Beings, giving rights to people and imposing obligations over any state to make these rights effective. Even if international Human Rights law doesn’t condemn collective punishment *per se*, **collective punishments breach many Human Rights such as the right to faire trial, the right to liberty and security of person, or the equality of all people before the law**, consecrated in the Universal Declaration of Human Rights (UDHR) and others legally binding international human rights treaties.

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<sup>14</sup> *United Nations Fact-Finding Mission on Gaza viewed conduct during ‘Operation Cast Lead’ as amounting to collective punishment (see paras 60, 74, 91, 1171, 1320, 1457, 1494)*

49. In its comment of article 4 of the International Covenant on Civil and Political Rights (ICCPR), about the possible derogations in time of public emergency, the UN Human Rights Committee (UNHRC) states that States parties may “in no circumstances” invoke a state of emergency “as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance ... by imposing collective punishments”.

**50. Israel is violating International Human Rights law by implementing collective punishments in breach of (among others):**

- **the right to a fair trial** (collective punishment often occurring before a civil or military trial proved the allegations of crime and punishes uninvolved people)
- **the right to liberty and security of person** (making innocent people become homeless or jobless)
- **equality of all people before the law** (the homes of Jewish terrorists, such as those who firebombed a Palestinian home, killing an 18-month-old baby and his parents in the West Bank village of Duma in July 2015, are not targeted for demolition)

**51. - Collective punishment, under international Criminal law,** is commonly accepted as a war crime under international humanitarian law (IHL). However, collective punishment is not listed as such in the list of crimes constitutive of war crimes under article 8 of the Rome Statute of the International Criminal Court (ICC) which rules crimes committed during an armed conflict or occupation.

52. The different measures enforced as collective punishment are still constitutive of other listed war crimes triggering the ICC competency, such as:

- (a)(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (c)(iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

53. Collective punishment is a crime in international criminal law, both at the national (enforced in many domestic legal system: Australia, Croatia, Ethiopia, Norway,...) and international level, such as stated in many other instruments including the statutes of the Special Court for Sierra Leone or the Criminal Tribunal for Rwanda which insert collective punishment in the list of crimes considered as war crimes.

**54. - Collective punishment under Israeli laws** is unlawful, in particular in Israel’s laws of war:

*55. Israel’s Manual on the Laws of War (1998)* states that “collective punishment” of prisoners of war is absolutely forbidden. *Israel’s Manual on the Rules of Warfare (2006)* reaffirms later on that “the disciplinary and punishment rules applicable in the army of the imprisoning country will also apply to the prisoners-of-war. Group punishments ... are absolutely forbidden.”

Many claims have been raised in front of the Israeli High Court of Justice (HCJ) but it rejected the argument that these measures constitute collective punishment, holding that the purpose of measures is not punitive, but deterrent.

56. Since the *de-facto* annexation of East-Jerusalem by Israel in 1967, the international community has repeatedly refused to recognize East-Jerusalem as part of Israel. East-Jerusalem is an occupied territory where Israeli laws are not to be enforced, and where international law should prevail. Israeli policy states wrongly that the 4<sup>th</sup> Geneva Convention and Hague Regulations of 1907

don't apply in East-Jerusalem. Nevertheless, even so, Israeli national laws also prevent collective punishment. Israel is therefore acting in violation of both international law and its domestic law.

- **Responsability**

57. The Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ) [deplores and condemns all forms of attacks on civilians](#), and emphasize that there is a [root cause for this violence](#) – Israel's continued violations of international law, including its brutal and illegal military occupation of the Occupied Palestinian Territory (OPT) that has lasted 50 years and its racist policies against Palestinian citizens of Israel - and this root cause cannot be ignored.

58. **Collective punishment is a war crime triggering state responsibility, according to the Geneva Conventions. As an institutionalized measure implemented by the State of Israel, the responsibility of the state is engaged in front of the ICJ (International Court of Justice).**

- **State responsibility:**

59. As a State, Israel has been granted rights but also [obligations under international law, and is responsible for the non-fulfillment of these obligations](#). Collective punishment is internationally recognized as war crime, Israel has the obligation not to perpetrate such measures and to prosecute the responsible.

60. The R2P, or responsibility to protect, binds all member states of the United Nations at the 2005 World Summit to prevent genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility lies on 3 pillars:

- **Pillar I: The protection responsibilities of the state**; sovereignty does not only gave a State the right to "control" its affairs, it also [conferred on the State primary "responsibility" for protecting the people within its borders](#).<sup>15</sup>
- **Pillar II: International assistance and capacity-building**; when a State fails to protect its people — either through lack of ability or a lack of willingness — the [responsibility shifts to the broader international community, to assist the State first](#).
- **Pillar III: Timely and decisive response**; appropriate diplomatic, humanitarian and other peaceful means by the international community and even [then be prepared to take stronger measures, including the collective use of force](#) through the UN Security Council.

61. **Israel is a member of the UN, signatory state of the Charter of the United Nations and as such, is responsible for the severe international law violations in front of the International Court of Justice (ICJ), principal judicial organ of the UN. Israel is responsible for the protection of the people within its borders, including occupied Palestinian territories (OPT).**

- **3<sup>rd</sup>-State responsibility:**

62. The Israeli practice of collective punishment has been condemned time and again. It has been brought to the attention of the international community in numerous statements and submissions to international human rights bodies: in particular by the former Special Rapporteur on the situation of

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<sup>15</sup> *Reports of the Secretary-General, Implementing the responsibility to protect (2009)*

human rights in the Palestinian territories occupied since 1967, Richard Falk, who addresses the issue of collective punishment in paragraphs 3 and 5.<sup>16</sup>

63. The 1<sup>st</sup> article common to the Geneva Conventions lay down the **responsibility of third States not involved**, in a given armed conflict, to take action in order to safeguard compliance with the Geneva Conventions by the parties to the conflict. It concludes that **third States have an international legal obligation not only to avoid encouraging international humanitarian law violations committed by others, but also to take measures to put an end to on-going violations, and to actively prevent their occurrence.**<sup>17</sup>

64. **The entire international community has the obligation under international law to take measures to insure that Israel respects the Geneva Conventions, and put an end to the collective punishments cited as a war crime under the Geneva Conventions. According to the responsibility to protect the international community has the responsibility to assist and take the appropriate measures for the protection of the people within the borders of Israel which fails to protect itself its population and the population of its occupied territories.**

- **Individual responsibility**

65. Even though Israel isn't part of the Rome Statute, according to article 12 of the Statute (territorial competency), the **ICC has competency over the territory of a Member State of which the conduct in question occurred**. Now an ICC member, beginning in the 13<sup>th</sup> of June 2014, Palestine has accepting the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem".

66. **The Rome Statute entered into force on 1 April 2015. Accordingly, on 16 January 2015, the Prosecutor announced the opening of a preliminary examination into the situation in Palestine in order to establish whether the Rome Statute criteria for opening an investigation are met. Consequently, following the preliminary investigation still ongoing at the ICC, individuals could be hold responsible for the crimes prosecuted under the jurisdiction of the ICC.**

**CCPRJ therefore calls upon the international community to give a protective response by:**

- Demanding an immediate halt to all collective punishment measures imposed by the Israeli authorities on Palestinians living in the occupied Palestinian Territory, including East Jerusalem;
- Condemning Israel for the current escalation of violence and recall that Israel's occupation, and institutionalized collective punishment measures, are the root cause of the ongoing situation;
- Ensuring that persons responsible for war crimes are brought to justice, by supporting efforts of Palestine to hold Israel accountable via international for a such as the International Criminal Court;
- Calling for sanctions against Israel at the UN Security Council

<sup>16</sup> Report of the International Commission on Intervention and State Sovereignty (ICISS), set up by the Canadian Government in December 2001 18 Report of the Special Rapporteur on the situation of human rights in the PTO since 1967, Richard Falk, 13th of January 2014, OHCHR

<sup>17</sup>Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations