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**Human rights situation in Palestine and other
occupied Arab territories**

Written statement* submitted by Norwegian Refugee Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.

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Collective Punishment including Retributive Violence in the Occupied Palestinian Territory

Over one million persons in the Occupied Palestinian Territory (oPt) have been identified as being affected in some way by the humanitarian consequences related to International Humanitarian Law (IHL) and International Human Rights Law (IHRL) violations, including forced displacement.

In the West Bank, Israeli settlement expansion continues at an unprecedented rate, including in East Jerusalem, which is compounded by the intent to apply Israeli sovereignty, law, and administration over significant parts of the West Bank in an attempt to acquire territory in violation of peremptory norms of international law.

Taken together, measures adopted by Israel which include the intent to acquire territory; the destruction – or threat of destruction – of private and public property; promotion of plans to transfer entire communities forcibly; the denial of basic service infrastructure and humanitarian relief; and the lack of secure residency, revocations of residency in East Jerusalem; and increasing movement restrictions in parts of the West Bank including areas adjacent to the Wall - give rise to the risk of forcible transfer of communities from their homes and lands, in violation of international humanitarian and human rights law.

These measures are often implemented against the backdrop of the establishment and expansion of Israeli settlements, and the consolidation of existing settlements into contiguous settlements blocs. These measures amount to a policy designed to create a coercive environment which would permanently transform the oPt in favor of Israeli territorial acquisition; thus, amounting to the formal annexation of significant parts of Palestinian territory, in violation of the principle of the provisional character of occupation and the prohibition on conquest found in international law.

The overall situation in Gaza remains fragile. It is of concern that Israel has maintained the access restrictions, in relation to the passage of persons and goods, including imperative relief consignments, despite the desperate humanitarian needs of the population in the health, water and energy, shelter, and education sectors.

The prohibition of collective punishments, to which Palestinians have been subjected, is stated in the Hague Regulations and the Fourth Geneva Conventions (Hague Regulations, Article 50; Third Geneva Convention, Article 87; Fourth Geneva Convention, Article 33). The prohibition is recognized in Additional Protocol I, Article 75(2)(d) as a fundamental guarantee for all civilians and persons *hors de combat*.

Such acts would also constitute a violation of specific human rights, in particular, the right to liberty and security of person and the right to a fair trial. In its General Comment on Article 4 of the International Covenant on Civil and Political Rights (concerning states of emergency), the United Nations Human Rights Committee stated 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.”

In the context of oPt, the law of occupation bans collective punishment. Under Article 50 of the Hague Regulations, ‘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.’

Article 33 of the Fourth Geneva Convention specifies that ‘no protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.’

Every person in the hands of the Occupying Power must be humanely treated, and must be protected against all acts of violence and threats thereof. They must be treated in all circumstances with respect for their persons, their honor, and their religious convictions. The below details instances when: (a) proscribed retributive violence is directed against an individual or collectively; (b) or when permissible punitive measures that should solely be directed at a wrongdoing individual are collectively applied, thus rendering them wrongful.

According to the peremptory rules of IHL, Israel, as an Occupying Power, is prohibited from forcibly transferring the protected population. Such a mass or individual transfer entails forced displacement, absent genuine consent, of one or more persons through expulsion or other forms of coercion from a location where they are lawfully present to another location within a national border. Such a displacement would only be considered lawful if motivated by an individual's own genuine desire to leave; or as part of a temporary evacuation intended to protect the security of the protected population or in accordance with imperative military necessity.

Israel, through a variety of mechanisms, creates such a coercive environment for many Palestinian communities, rendering their choice to relocate from affected areas devoid of genuine consent. These mechanisms are entrenched in both the forcible transfer of the local population as well as the transfer of the Occupying Power's civilian population into the territory it occupies and themselves amount to a variety of additional violations of IHL as well as IHRL.

Israeli authorities have used a broad range of legal measures to revoke the temporary residence status of East Jerusalem Palestinians. From the mid-1990s, Israel has been implementing a policy of residency revocation of Palestinian East Jerusalemites based on the 'Centre of Life' Policy. Residents are thus regularly required to prove, by way of a rigorous process, that their 'Centre of Life' has remained in East Jerusalem for the past seven consecutive years. Anyone who fails to do so may have their residency status revoked, thus potentially rendering them stateless. While Israeli law permits the revocation of the residency of Palestinians on an individual basis, currently, there is no legal authority for mass and blanket revocation.

The revocation of residency has grave consequences for the conditions of life in many respects. In many cases, it prevents access to essential services, such as health care and education. Employment is impossible or impeded if a checkpoint has to be crossed on the way between the employer and the person's domicile. For the same reason, family life is rendered severely impaired. This is particularly true where children and spouses do not also hold the status of a permanent resident. The residents of East Jerusalem are protected persons – owing to the unique status of East Jerusalem, and as such, are protected from deportation under international humanitarian law and are furthermore exempt from swearing allegiance to the Occupying Power.

The siege imposed on the Gaza Strip was intended as a form of economic and political warfare and is not restricted to items that could be utilized in active hostilities directed at Israel, but also includes ordinary consumer goods with no military application. As such, it has a disproportionate and punitive impact on the civilian population and has aggravated the humanitarian crisis in Gaza. It amounts to the collective punishment of civilians in Gaza, in breach of Article 33 GCIV, as noted on numerous occasions by the High Commissioner for Human Rights, the Human Rights Council, and the International Committee of the Red Cross (ICRC).

According to Article 78 GCIV, civilians in occupied territories can be assigned to residence within the occupied territory (as opposed to deportation outside the territory) for imperative reasons of security. However, such a decision should be taken by the competent authority on an individual basis, with a possibility to appeal it, and subject to legal review. An assigned residence is an exceptional measure of precaution, which demands an individual consideration, as opposed to collective measures.

By preventing Palestinians at-large from freely choosing their place of residence, be it the West Bank or Gaza, and from changing their place of residence, place of business, and study at will, Israel is imposing a collective measure of assigned residence without due consideration for its lawful purpose and execution. Inhibiting Palestinians from choosing their place of residence would thus amount to a form of collective punishment, prohibited under Article 33 GCIV.

The fact that the Gaza Strip and the West Bank are a single territorial unit means that Gaza's residents in transit towards the West Bank do not seek to leave the occupied territory. Absent any situation of hostilities in the Gaza Strip, limitations on the freedom of movement of protected persons may be undertaken only to restore and ensure public order under Article

43. This means that the occupying power may limit freedom of movement only following the rules in force in the occupied territory prior to the beginning of the occupation and pursuant to the means available to the ousted sovereign. Accordingly, an Occupying Power can only limit freedom of movement in light of the applicable rules of domestic law and international human rights law.

Accordingly, the illegality of some specific Israeli practices related to the Gaza Strip closure and their impact on protected persons collectively constitute illegal collective punishment under international humanitarian law.
