

16 May 2022

URGENT

Mr. Karim Khan, Prosecutor
Office of the Prosecutor
International Criminal Court
Oude Waalsdorperweg 10
The Hague, The Netherlands

**Ongoing War Crimes and Crimes Against Humanity in Occupied Jerusalem
Arbitrary Detention, Residency Revocation, Forcible Transfer and Deportation**

*Case of Salah Hammouri
Situation in the State of Palestine*

Dear Prosecutor Khan,

Salah Hammouri is a Palestinian-French human rights lawyer from Jerusalem who has long been targeted by Israel for intense harassment, repeated arbitrary detention, and the denial of his fundamental rights, including the right to family and family unity; freedom of movement; the freedom of association, assembly, expression and the right to protest; the right to pursue a livelihood; and the right to citizenship. His wife, Elsa Lefort, a French national, was denied entry and deported in 2016 by Israel, which prevented the birth of their child in Jerusalem; that entry ban continues until today.¹ In September 2020, Mr. Hammouri was advised that his Jerusalem residency would be revoked for a “breach of allegiance” to the occupying power, the State of Israel, and a year later, his residency was in fact revoked. He is now detained without charge and faces imminent deportation.²

Since 2020, Mr. Hammouri has been effectively prevented from traveling to France to see his family, except for a two-week pass he was given to witness the birth of his second child in April 2021.³ On 18 October 2021, Mr. Hammouri was notified of the Israeli Minister of

¹ See Al-Haq, *Al-Haq condemns the revocation of lawyer and human rights defender Salah Hammouri’s Jerusalem residency*, 19 October 2021, <https://www.alhaq.org/advocacy/18995.html>.

² This submission has been prepared by the undersigned counsel on Mr. Salah Hammouri’s behalf. Counsel received instruction from Mr. Hammouri regarding its content prior to his imprisonment on 7 March 2022, and are empowered to represent his interests before this Court, even as he remains unavailable for direct, regular consultation due to his ongoing detention without charge by the Israeli authorities.

³ Mr. Hammouri fears that if he leaves Palestine, he may not be allowed to return. He was granted a special permit to travel to France to witness the birth of his second child. See Salah Hammouri, *We are*

Interior's decision to revoke his permanent Jerusalem residency based on the "breached allegiance" amendment to the Entry into Israel Law. The revocation of Mr. Hammouri's residency constitutes a direct act of forcible transfer, which is a grave breach of the Fourth Geneva Convention and amounts to the war crime of forcible transfer, as well as the denial of fundamental rights because he is Palestinian. The revocation also constitutes persecution – a crime against humanity – and an inhumane act of apartheid under the Rome Statute of the International Criminal Court (ICC).

The attacks by Israel, the occupying power, on Mr. Hammouri's rights and freedoms are severe – but they are not isolated. The violations to which he is being subjected, with increasing severity, are part of a larger attack on Palestinian residents of Jerusalem in particular, and Palestinians living in occupied Palestine writ large. As Mr. Hammouri wrote the day before his arrest, the treatment he is subjected to is "a testing ground for Israel's escalating and ceaseless attacks on Palestinians."⁴ If Mr. Hammouri's residency revocation is upheld and acted upon, it will set a very dangerous precedent of secret evidence being applied at will against other Palestinians from Jerusalem, thereby effectuating the forcible transfer of the occupied population by the occupying power through a novel, and illegitimate, new method.

We write now to respectfully urge you to hasten the investigation in the Situation in Palestine and move swiftly towards bringing arrest warrants for concrete cases, amongst which must be one related to the crimes being committed against Palestinians in occupied East Jerusalem, including the violations against Mr. Hammouri detailed herein. The cost of delay, and with it, continued impunity, is being paid daily – in the loss of Palestinian lives, and the denial of Palestinian safety and freedom.

As you know, the Court's jurisdiction over the territory of the State of Palestine – Gaza and the West Bank, including East Jerusalem – is confirmed,⁵ and an investigation has been ongoing since March 2021.⁶ Last April, more than 190 Palestinian, Israeli, regional and international organizations joined 28 families from the Sheikh Jarrah neighbourhood of occupied East Jerusalem in their call to the ICC to advance the investigation of war crimes and crimes against humanity on the territory of Palestine, with particular urgency vis-à-vis the escalating forcible transfer and persecution against Palestinians in East Jerusalem.⁷ Since that time, however, there

Palestinians, and We Refuse to Leave Our Homeland, JACOBIN, 6 March 2022, <https://jacobinmag.com/2022/03/salah-Hammouri-palestinian-liberation-israeli-occupation/> [hereinafter Hammouri, *We are Palestinians*].

⁴ *Id.*

⁵ Situation in the State of Palestine, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' ICC-01/18, (5 February 2021) https://www.icc-cpi.int/CourtRecords/CR2021_01165.PDF.

⁶ ICC, 'Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine' (3 March 2021) <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>.

⁷ Letter from 28 families of Sheikh Jarrah to Prosecutor Bensouda, *Urgent: Investigate Imminent Forced Evictions in Sheikh Jarrah*, 22 April 2021, <https://ccrjustice.org/letter-190-organizations-urge-icc-prosecutor-investigate-forced-evictions-palestinian-families>. The families noted that the Prosecutor has

have been no public statements from your Office on the status of the investigation in the Situation of Palestine – or on the continued commission of crimes on the territory of Palestine, including in East Jerusalem. Indeed, there is an increasing sense that the silence and lack of any outward signs of progress at the ICC is providing at least a yellow, if not green, light for the continued commission of crimes by Israel.

It is urgent that your Office investigate the ongoing – and escalating – attacks on and forced displacement of Palestinians from East Jerusalem alongside the continued transfer of Israeli citizens into the occupied territory as part of its war crimes and crimes against humanity investigation on the territory of Palestine. We call upon your Office to focus on the multi-faceted efforts to remove Palestinians from Jerusalem, including through house demolitions, discriminatory zoning, forced evictions, arbitrary detention, an elaborate permit system and the revocation of residency, of which Mr. Hammouri’s case is both a stark example and a warning of new tactics.

a. Salah Hammouri

Salah Hammouri is a lawyer and human rights defender born in 1985 in Jerusalem. He is a dual Palestinian-French citizen, through his father and mother, respectively. A life-long resident of Jerusalem, he currently works as a lawyer with Addameer Prisoner Support and Human Rights Association, a Palestinian non-governmental organization. He has two young children who reside with his wife Elsa Lefort in France, as she has been prohibited from entering Palestine.

Mr. Hammouri’s human rights activism has long been the focus of – and cause for repression and harassment by – Israel: in 2001, when he was only 16 years old, Mr. Hammouri was detained for five months during the Second Intifada. He was detained again in 2004 and spent four months in jail under administrative detention, without charge or trial. In 2005, he was imprisoned for allegedly planning to kill a rabbi associated with the ultra-Orthodox Shas Movement;⁸ while Mr. Hammouri denied (and continues to deny) the accusations, he was imprisoned for seven years rather than accepting an offer that would have had him deported to France for fifteen years.⁹ With just three months left of his sentence, Mr. Hammouri was released in 2011 as part of a prisoner exchange.

Mr. Hammouri was imprisoned twice more and placed in administrative detention without charge: in August 2017, for more than one year, and then in 2020 for nine days.¹⁰ Israel has

issued a statement recalling that forcible transfer and the destruction of civilian property without military necessity are war crimes in the context of the threats to the Palestinian Bedouin community of Khan al-Ahmar in 2018, prior to the opening of the investigation. See ICC, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, regarding the Situation in Palestine*, 17 October 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=181017-otp-stat-palestine>.

⁸ Aryeh Deri, the Israeli Interior Minister at the time Mr. Hammouri’s residency was revoked, is one of the founders of the Shas Movement

⁹ See Hammouri, *We are Palestinians*, *supra* n. 3.

¹⁰ Mr. Hammouri was arrested at a medical facility while taking a covid test in preparation for his travel to France to see his family.

also placed travel restrictions upon him, including barring him from traveling from Jerusalem to other parts of the West Bank in 2015, which, notably, coincided with the time when he was to sit for his legal studies exams.

Israel's harassment of Mr. Hammouri has also breached his privacy. On 8 November 2021, a Front Line Defenders investigation conducted in collaboration with Citizen Lab and Amnesty International's Security Lab found that he was one of six Palestinian human rights defenders hacked by Israeli NSO Group's notorious Pegasus spyware.¹¹ Along with FIDH, Mr. Hammouri has filed criminal complaint against NSO in France to investigate this unlawful surveillance and invasion of privacy.¹²

On 3 September 2020, the Israeli occupying authorities notified Mr. Hammouri of then-Minister of Interior Aryeh Deri's intention to revoke his permanent residency status for so-called "breach of allegiance" to the State of Israel. Mr. Hammouri lodged a formal challenge to the decision. Despite that challenge, and protestations by French and Palestinian officials as well as by United Nations Special Procedures and civil society groups that Mr. Hammouri is a protected person in occupied territory,¹³ Israel's Interior Ministry officially revoked Mr. Hammouri's permanent residency on 18 October 2021.

Notably, the decision against Mr. Hammouri is based on "secret information," undermining and fundamentally violating his right to due process and a fair trial in addition to the denials of other rights arising out of this effort to forcibly transfer him from his homeland.

Despite both the outrageousness of requiring an occupied population to effectively swear allegiance to an occupying power and the fundamental due process violations underpinning the decisions against him, the Israeli High Court rejected Mr. Hammouri's appeal for the suspension of procedures associated with the permanent residency revocation and forced deportation, including the travel ban, in December 2021.¹⁴ On 3 January 2022, the Jerusalem District Court dismissed his appeal against the permanent residency revocation decision,

¹¹ Front Line Defenders, Six Palestinian human rights defenders hacked with NSO Group's Pegasus Spyware, 8 November 2021, <https://www.frontlinedefenders.org/en/statement-report/statement-targeting-palestinian-hrds-pegasus>.

¹² FIDH, *France: criminal complaint against the Israeli company NSO for illegally infiltrating the phone of French-Palestinian human rights defender Salah Hammouri*, 5 April 2022, <https://www.fidh.org/en/issues/human-rights-defenders/france-fidh-and-ldh-submit-a-criminal-complaint-against-the-israeli>; Edna Mohamed, *France: NSO Group sued over hacking Palestinian activist's phone*, Middle East Eye, 5 April 2022, <https://www.middleeasteye.net/news/france-pegasus-spyware-nso-group-sued-palestinian-activist-phone-hacked>.

¹³ See, e.g., UN OHCHR, "Israel must safeguard human rights defenders in Occupied Palestinian Territory and within its borders – UN expert", 11 August 2021, <https://www.ohchr.org/en/press-releases/2021/08/israel-must-safeguard-human-rights-defenders-occupied-palestinian-territory?LangID=E&NewsID=27375>; Front Line Defenders, "Human Rights Defender Facing Deportation for Alleged "Breach of Allegiance", 28 February 2022; <https://www.frontlinedefenders.org/en/case/human-rights-defender-facing-deportation-alleged-%E2%80%9Cbreach-allegiance%E2%80%9D>, Al Haq et al., Urgent Appeal.

¹⁴ 26 December 2021 decision.

rendering Mr. Hammouri vulnerable for removal at any point, in violation of international law. The appeal is now before the Israeli High Court, which has set the next hearing for 6 February 2023.

On 6 March 2022, Mr. Hammouri published a piece in *Jacobin*, “We are Palestinians and We Refuse to Leave Our Homeland.”¹⁵ One day later, he was arrested during a dawn raid on his apartment in Kufr ‘Aqab – a neighbourhood that falls within the boundaries of Jerusalem but beyond the Separation Wall, thus cut off physically from East Jerusalem.¹⁶ He is currently being detained without charge, under a renewable 3-month order of administrative detention, based on secret evidence that apparently identifies him as a security threat due to alleged organizational activities. Notably, three days after his arrest, the Israeli High Court rejected Mr. Hammouri’s appeal of the decision to deny suspension of procedures regarding his permanent residency revocation, as urged by the Israeli Attorney General behind his detention.

Even as he awaits the High Court’s decision on his revocation challenge and his release from detention without charge, the risk of Mr. Hammouri’s deportation is acute.¹⁷

b. The “Breach of Allegiance” Revocation Law

On 7 March 2018, the Israeli Parliament passed Amendment No. 30 to the Entry into Israel Law of 1952, allowing the Israeli Minister of Interior to revoke the permanent residency status of Palestinian residents of Jerusalem who the Minister deems have ‘breached allegiance’ to Israel.¹⁸ The bill passed despite a coalition of human rights organizations detailed “grave

¹⁵ Hammouri, *We are Palestinians*, *supra* n. 3.

¹⁶ See Association France Palestine Solidarité *et al*, *Urgent Appeal to the United Nations Special Procedures: Palestinian Human Rights Defender and Lawyer Salah Hammouri Facing Continued Arbitrary Arrest and Imminent Risk of Forcible Deportation*, 21 March 2022, https://www.alhaq.org/cached_uploads/download/2022/03/28/urgent-appeal-salah-hammouri-facing-continued-arbitrary-arrest-and-at-imminent-risk-of-forcible-transfer-21-3-1648447783.pdf.

¹⁷ *Id*,

¹⁸ Knesset, Knesset Passes Legislation Authorizing Interior Minister to Revoke Permanent Residency Status over Involvement in Terrorism, 7 March 2018, http://knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=13803.

The adoption of Amendment 30 follows a decision by Israel’s Supreme Court that the revocation of Jerusalem residency for three Palestinian members of the Palestinian Legislative Council and the Palestinian Minister for Jerusalem Affairs for failure to demonstrate “minimal obligation of loyalty to the State of Israel” by the Interior Minister was invalid under existing Israeli law; the court suspended the decision for six months pending amendment to the law to permit such residency revocation. In that case, the four Palestinian officials were found insufficiently loyal to Israel because they chose to belong to a Palestinian political party, Hamas, and serve in elected positions following the 2006 Palestinian elections, i.e., were punished for exercising their political opinion and rights of association, assembly and expression. If the four were to continue to belong to Hamas, Israel argued they should “locate themselves in Palestinian Authority territories,” meaning the four would be expelled from their home city and forcibly transferred outside Jerusalem, an internationally recognized occupied territory, because of their political opinions. *See generally* Adalah, *After 10 years of litigation, Israeli Supreme Court rules interior minister cannot revoke Palestinian parliamentarians’ Jerusalem*

concerns” about the law and its compliance (or lack thereof) with human rights and humanitarian law.¹⁹ The amendment defines a breach of allegiance 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 1977.²⁰ The Minister is given broad discretion to apply these vague criteria to any Palestinian resident of Jerusalem. That Palestinians are not citizens of Israel nor the fact that Israel is an occupying power are of no consequence when applying punishment for failing to demonstrate allegiance to Israel.

The “breach of allegiance” law must be understood in historical context. The Israeli government has long used revocation of residency as a retaliatory tactic against Palestinian residents of Jerusalem.²¹ Following the occupation of the Palestinian territory in 1967 and the illegal annexation of East Jerusalem, Palestinians physically present in East Jerusalem were granted “permanent residency” – a status equivalent to what a non-Jewish foreigner who moves to Israel would be granted – rather than Israeli citizenship or any other status that acknowledged them as an indigenous population.²² Notably, if Palestinians from Jerusalem were to seek instead to have their status recorded with the Palestinian Authority, Israel would prohibit them from residing in Jerusalem – even if they were born there and their families resided there for centuries.²³ Residency as a status provides less entitlements and protections than citizenship, which has been the reality for Palestinian residents of Jerusalem. Beyond revocation based on ‘breach of allegiance’, the Entry into Israel Law and Regulations provide for a revocation of residency in cases of prolonged absence and forces Palestinian residents to prove that Jerusalem has been their “Center of Life” for seven consecutive years.²⁴ Through these laws and other

residency for ‘breach of allegiance’, 13 Sept. 2017, <https://www.adalah.org/en/content/view/9227>; and Israel Ministry of Foreign Affairs, *Removal of Jerusalem residency of four Hamas representatives – Legal background*, 28 June 2010, https://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/Removal_Jerusalem_residency_Hamas_representatives_28-Jun-2010.aspx.

¹⁹ See Adalah, *New Bill Allowing Revocation of Residency of Palestinians in East Jerusalem For “Breach of Loyalty” is Illegal*, 18 February 2018, <https://www.adalah.org/en/content/view/9390>.

²⁰ Al-Haq, “Residency Revocation: Israel’s Forcible Transfer of Palestinians from Jerusalem,” 3 July 2017, <http://www.alhaq.org/advocacy/6331.html>

²¹ See, generally, Al Haq, *Annexing a City: Israel’s Illegal Measure to Annex Jerusalem Since 1948*, May 2020, <https://www.alhaq.org/publications/16855.html>.

²² Michael Bothe, “Legality of Israel’s Policy Regarding the Revocation of Residency in East Jerusalem,” https://www.nrc.no/globalassets/pdf/legal-opinions/residency-revocation-report---bothe_small.pdf (noting that Residency is not automatically applied to children of those who have that status, they have to apply for the right).

²³ Ibrahim Hussein, *Israel’s ‘silent transfer’ of Palestinians out of Palestine*, Al Jazeera, 27 September 2020, <https://www.aljazeera.com/news/2020/9/27/israels-silent-transfer-of-palestinians-out-of-palestine> (Does not make this exact statement but provides various examples to speak to how holding PA status undermines Jerusalem residency).

²⁴ Bothe, *supra* n. 22. Human Rights Watch reported on the weight of maintaining having to satisfy the “center of life” test on Palestinians’ daily lives, leading to Palestinians foregoing educational or professional opportunities for fear of losing their status in the city of their birth. Human Rights Watch, See, e.g., *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, p. 192-93, <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities->

tactics, Israel has illegally revoked the residency status of more than 14,500 Palestinian residents of Jerusalem since 1967.²⁵

Revocation of residency as applied to Palestinian residents of Jerusalem like Mr. Hammouri is illegal under international law.²⁶ The West Bank, including East Jerusalem, and the Gaza Strip form the occupied Palestinian territory. The population of the occupied Palestinian territory are “protected persons” under Article 4 of the Fourth Geneva Convention.²⁷ Revocation of residency amounts to forcible transfer, a grave breach of Articles 49 of the Fourth Geneva Convention²⁸ and a war crime under Article 8 of the Rome Statute. The ‘breached allegiance’ amendment to the to the Entry into Israel Law specifically violates international humanitarian law because under Article 45 of the Hague Regulations and Article 68(3) of the Fourth Geneva Convention, the protected population in an occupied territory does not have a duty of allegiance to the Occupying Power. The restrictions of the freedom of movement involved in the revocation of residency rights also leads to family separation in violation of Article 27 of the Fourth Geneva Convention which entitles protected persons to respect for their persons, their honour, their family rights, and much more.

Residency revocations are also part of a widespread and systematic policy to transfer the protected Palestinian population²⁹ and to consolidate Israel’s settler-colonial regime, constituting crimes against humanity of forced displacement, persecution and of apartheid under Article 7 of the Rome Statute. Israel’s discriminatory restriction on residency is an “intentional and severe deprivation of fundamental rights” of Palestinians that amounts to systematic discrimination and repression.³⁰ Furthermore, Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention prohibit the extension of the law of the occupying power to the occupied territory. Therefore, Israel’s domestic Entry into Israel Law

[and-crimes-apartheid-and-persecution#1292](#); Al Haq, *Annexing a City: Israel’s Illegal Measure to Annex Jerusalem Since 1948*, pp. 27-29.

²⁵ See Visualizing Palestine, *Residency Revocation*, <https://visualizingpalestine.org/visuals/residency-revocation>.

²⁶ For a challenge to the law under both international law and Israeli law, see *HaMoked petitions the HCJ to repeal the law that allows the Minister of Interior to revoke permanent residency status for “breach of allegiance to the State of Israel” and to cancel its implementation regarding two East Jerusalem men*, 15 Sept. 2019, <https://hamoked.org/document.php?dID=Updates2101>.

²⁷ This applies whether Palestinians in the occupied territory are viewed as stateless or members of a party to the convention (Palestine declared statehood in 1988 and ratified the Geneva Conventions on 2 April 2014).

²⁸ An article 49 violation applies only to an occupied territory and prohibits forcible transfers of protected persons within or to places outside the occupied territory.

²⁹ In 2021, Israel’s Ministry of Interior stripped 26 East Jerusalem Palestinians of their permanent residency status as part of Israel’s; 15 of them women and one minor. This is referred to as a ‘silent transfer’ or ‘silent deportation’. HaMoked, *Freedom of Information data: In 2021, Israel’s Ministry of Interior stripped 26 East Jerusalem Palestinians of their permanent residency status as part of Israel’s “quiet deportation” policy*, 25 Jan. 2022, <https://hamoked.org/document.php?dID=Updates2295>.

³⁰ Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, p. 20, <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution#1292>.

is illegally applied to the protected Palestinian population in occupied East Jerusalem, to force their transfer from Jerusalem, in violation of the limited administration of Israel, the Occupying Power.

The forcible transfer of Palestinian residents of Jerusalem often results in the denial of basic human rights. The Israeli government's policy of residency revocation accordingly also violates international human rights law, as codified in the Rome Statute through persecution specifically, and also captured in the crimes of apartheid.

In the case of Mr. Hammouri, the Israeli Minister of Interior's decision to revoke his permanent Jerusalem residency based on the 'breached allegiance' amendment to the Entry into Israel Law specifically violates articles 12, 17, and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 12 provides, "the right to liberty of movement and freedom to choose his residence," except in instances "necessary to protect national security, public order...". The revocation of Mr. Hammouri's residency is a denial of his freedom to choose his own residency. The reasoning provided by Israeli authorities for the revocation is not legitimately based on national security but rather a form of retaliatory harassment.³¹ Article 17 states that, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." Mr. Hammouri has been denied reunification with his wife and two children, prohibiting him from actualizing his right to family. His wife has even been denied entry into Israel to be with him. Article 26 is the antidiscrimination clause of the ICCPR, which is violated by singling out Palestinian residents of Jerusalem for residency revocation without valid reason.

Notably, during its review of the fifth periodic report of Israel on its implementation of the ICCPR, the UN Human Rights Committee noted Mr. Hammouri's case in pointing to Israel's alarming arbitrary policy of residency revocation based on "breach of allegiance" to control the demographic composition of Jerusalem.³²

c. The Broader Context: Palestinians in Jerusalem under Attack

The revocation of Mr. Hammouri's residency, his arrest, and the many years of harassment and denial of fundamental rights – amounting to and resulting in the commission of crimes under the Rome Statute – must be placed in the larger context of the crack-down on rights, upsurge

³¹ See Hammouri, *We are Palestinians*, *supra* n. 3. Mr. Hammouri was arrested in 2005, accused of attempting to assassinate a rabbi, who was prominent member of the ultra-Orthodox Shas party, something that Israeli police could not substantiate except with testimony of others derived under torture by the Israeli police. At the time, Mr. Hammouri was offered fifteen years' exile in France instead of imprisonment (which he refused), showing the Israeli government's intent has always been to deport and forcibly transfer Mr. Hammouri from Jerusalem.

³² Human Rights Committee, CCPR- International Covenant on Civil and Political Rights, 3841st Meeting, 134th Session, 2 March 2022, <https://media.un.org/asset/k1v/k1vz640m3b> [Around minute 47:30].

in violence, and increased efforts to reduce the population of Palestinians in Jerusalem and destroy “Palestinian Jerusalem.”³³

Since Israel occupied and illegally annexed East Jerusalem in 1967 and 1980, respectively, Palestinian Jerusalemites have been subjected to a coercive environment designed to transform Jerusalem’s demographic composition to secure Israeli-Jewish control over Jerusalem and forcibly drive out Palestinians. Through its prolonged belligerent occupation, Israeli authorities, including the Jerusalem municipality, have used a multifaceted system in its efforts to rid occupied East Jerusalem of Palestinians and replace them with Jewish Israelis in order to create what it has called a “demographic majority” in “Greater Jerusalem.” This system has included discriminatory zoning, barriers on obtaining building permits, home demolitions, forced evictions, restrictions on movement, travel and residency rights – including residency revocations – and has implemented an elaborate permit regime and restrictive residency policy that has prevented family unifications, described above.³⁴ Israel’s fragmentation of the occupied Palestinian territory, and the restrictions imposed on which parts of the oPt Palestinians are able to visit, reside in or work, enforced by checkpoints and an elaborate exclusive road system,³⁵ has contributed to the comparative decrease of the Palestinian presence and influence in Jerusalem over the last 25 years.³⁶ As Human Rights Watch aptly summarized, Israel is “seeking maximal land with minimal Palestinians”³⁷ – and this is true nowhere more than in Jerusalem. In fact, the Israeli government’s plan for the municipality sets the goal of “maintaining a solid Jewish majority in the city” and a target demographic “ratio of 70% Jews and 30% Arabs”—later adjusted to a 60:40 ratio after authorities acknowledged that “this goal is not attainable” in light of “the demographic trend.”³⁸ Jewish-only settlements are present, and ever-growing, in the Old City’s Muslim and Christian Quarters, Sheikh Jarrah, Silwan, Ras al-Amoud and Abu Tur, and have separated Palestinian neighborhoods from one another, while the E-1 settlement project has separated East Jerusalem from the rest of the West Bank.³⁹ Israel’s demographic goals remain an integral part of its master plans for Jerusalem,

³³ See, e.g., Yara Hawari, *Destroying Palestinian Jerusalem, One Institution at a Time*, Al Shabaka, 29 October 2020, <https://al-shabaka.org/briefs/destroying-palestinian-jerusalem-one-institution-at-a-time/>; Al Haq, *Occupying Jerusalem’s Old City: Israeli Policies of Isolation, Intimidation and Transformation*, September 2019, <https://www.alhaq.org/publications/15212.html>.

³⁴ See, e.g., From “United” to Greater Jerusalem: Annexation 1967-2020 A New Map and Analysis, <https://www.ir-amim.org.il/en/node/2524>; International Crisis Group, <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/israel-palestine/202-reversing-israels-deepening-annexation-occupied-east-jerusalem>.

³⁵ See Breaking the Silence, *Highway to Annexation: Israeli Road and Transportation Infrastructure Development in the West Bank*, December 2020, [Highway-to-Annexation-Final.pdf \(breakingthesilence.org.il\)](https://www.breakingthesilence.org.il).

³⁶ For discussion of the targeting of Palestinian educational, cultural and social institutions in Jerusalem, see Al Haq, *Occupying Jerusalem’s Old City: Israeli Policies of Isolation, Intimidation and Transformation*, *supra* n. 33, pp. 27-30.

³⁷ Human Rights Watch, *supra* n. 30, at 10.

³⁸ *Id.*, p. 12.

³⁹ See B’Tselem, *The E1 plan and its implications for human rights in the West Bank*, 2 December 2012, updated 17 November 2013, https://www.btselem.org/settlements/20121202_e1_human_rights_ramifications.

consistent with a decades-long effort to alter the character, legal status, and demographic composition of the city.⁴⁰

The following, *non-exhaustive* list of tactics contributes to the war crime of forcible transfer of Palestinians from occupied East Jerusalem, and denial of fundamental rights to Palestinians on a widespread and systematic basis amounting to the crimes against humanity of persecution and apartheid:

Building permits, forced evictions and home demolitions: From 1967-2017, 38% of land, including private Palestinian land, has been expropriated by the Israeli government for Jewish-only use.⁴¹ That number is likely to increase. As has been widely reported on, and brought to your Office’s attention, Palestinians in the Sheikh Jarrah neighbourhood face imminent forced evictions, with settlers literally moving into and occupying Palestinian’s homes.⁴² Despite how precarious and dangerous the situation is for Palestinians in Sheikh Jarrah, they are not alone in facing expulsion. In Batn el Hawa, Silwan, for example, scores of Palestinian families face eviction claims and threats of forcible transfer.⁴³ And the situation keeps getting worse: 2021 saw the greatest number of house demolitions in the oPt, including in Jerusalem, since 2016.⁴⁴ Israel regularly demolishes homes and businesses – civilian property – while it denies permits to construct homes and businesses. Just last week U.N. experts concluded that “Israel’s housing policies in East Jerusalem amount to racial segregation and discrimination against Palestinian

⁴⁰ Coalition for Jerusalem, Master Plan 2000 – English Translation, 2 May 2007, available at: <http://coalitionforjerusalem1.blogspot.com/2007/05/master-plan-2000-english-translation.html>; PASSIA, <http://www.passia.org/maps/view/67>.

⁴¹ A/HRC/49/87, para. 48.

⁴² See, e.g., Letter from 28 families of Sheikh Jarrah to Prosecutor Bensouda, *Urgent: Investigate Imminent Forced Evictions in Sheikh Jarrah*, 22 April 2021, <https://ccrjustice.org/letter-190-organizations-urge-icc-prosecutor-investigate-forced-evictions-palestinian-families>; Mohammed el-Kurd, *My Neighbor Protested his Family’s Expulsion from its Home – Now he’s in an Israeli Prison*, The Nation, 21 December 2021, <https://www.thenation.com/article/world/sheikh-jarrah-protest-prison/>.

⁴³ See, e.g., B’Tselem, *Batan al-Hawa, Silwan: The next target for “Judaization” of East Jerusalem*, 11 December 2016, https://www.btselem.org/jerusalem/20161208_batan_al-hawa; Al Haq, *House demolitions and Forced Evictions in Silwan*, 26 August 2020, <https://www.alhaq.org/publications/17247.html>; Amnesty International, *Israel/OPT: Scrap plans to forcibly evict Palestinian families in Silwan*, 25 May 2021, <https://www.amnesty.org/en/latest/news/2021/05/israel-opt-scrap-plans-to-forcibly-evict-palestinian-families-in-silwan/>.

⁴⁴ U.N. OCHA, *Breakdown of Data on Demolition and Displacement in the West Bank*, <https://app.powerbi.com/view?r=eyJrIjoiMmJkZGRhYWQtODk0MS00MWJkLWI2NTktMDg1NGJlMGNiY2Y3IiwidCI6IjBmOWUzNWRiLTU0NGYtNGY2MC1iZGNjLTVIYTQxNmU2ZGM3MCI9ImMiOjh9>. See also *Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967*, A/HRC/49/87, 21 March 2022, para. 47.

people,” citing discriminatory zoning and planning regimes that “restrict access to housing, safe drinking water and sanitation, and other essential services.”⁴⁵

Restrictions on movement: checkpoints and permits: As explained above, and demonstrated through the case of Mr. Hammouri, residency in Jerusalem for Palestinians is tenuous. And for nearly thirty years, being a lawful resident has essentially been the only way for a Palestinian from the oPt to be present in Jerusalem. Palestinians from other parts of the West Bank or from the Gaza Strip must apply for a permit to travel to Jerusalem, including for religious celebrations and services, medical care and education.⁴⁶ At the same time, not even all Palestinian Jerusalemites are able to live or travel easily around Jerusalem: between 120,000-140,000 Palestinians Jerusalemites live on the West Bank side of the wall separated from the heart of the city, due to Israel’s construction of the wall beyond the Green Line.⁴⁷ The wall and checkpoints physically separate Palestinians in Jerusalem from other parts of the West Bank, while keeping Gaza under closure. Jewish settlers are able to bypass checkpoints and travel freely throughout the West Bank, including into Jerusalem, across a network of highways and roads connecting Jewish-only settlements – despite this being occupied Palestinian territory.⁴⁸

Family Separation: Even before his current detention, because of the order revoking his Jerusalem residency, and the denial of his wife (and thus, his young children) to travel to Jerusalem, Mr. Hammouri has been separated from his family because of Israeli policies, practices and punishment. Mr. Hammouri is not alone among Palestinians from Jerusalem, and across the occupied Palestinian territory who are separated due to Israel’s discriminatory policies. Since 2002, Palestinians from other parts of the West Bank and from Gaza are prohibited from gaining status in East Jerusalem through marriage;⁴⁹ Palestinian residents of Jerusalem are regularly denied permits for Palestinian partners from other parts of the oPt, making family unification possible only if the Jerusalem resident is to leave the city – thereby risking a loss of residency under the “center of life” requirement.⁵⁰ These measures are part of a broader set of laws that keep Palestinian families separated: in March of this year, the Israeli Knesset approved the cruel *Citizenship and Entry into Israel Law*, which denies Palestinians from the occupied territory who are married to Palestinians with Israeli citizenship the right to gain residency or citizenship, thus denying family (re)unification.⁵¹

⁴⁵ United Nations, *Israel’s housing policies in occupied Palestinian territory amount to racial segregation - UN experts*, Press Release, 27 April 2022, <https://www.ohchr.org/en/press-releases/2022/04/israels-housing-policies-occupied-palestinian-territory-amount-racial>.

⁴⁶ A/HRC/47/57, 29 July 2021, para. 63; Al Haq, *Occupying Jerusalem’s Old City: Israeli Policies of Isolation, Intimidation and Transformation*, *supra* n. 33, pp. 7-9.

⁴⁷ A/HRC/49/87, para. 48.

⁴⁸ See, generally, Amnesty International, *Israel’s Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, 1 February 2022, pp. 74-81, 95-98, <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>.

⁴⁹ *Id.*, pp. 98-104.

⁵⁰ Al-Haq, *Annexing a City: Israel’s Illegal Measure to Annex Jerusalem Since 1948*, pp. 29-31.

⁵¹ See, e.g., Adalah, *Israel Reinstates Ban in Palestinian Family Unification*, 10 March 2022, <https://www.adalah.org/en/content/view/10576>; Ahmad Melham, *Israeli citizenship law blocks*

Violence and arrests: Israeli security forces maintain a regular presence throughout occupied East Jerusalem, and there are often dramatic increases in the use of violence by security forces against the Palestinian civilian population and a concomitant spike in arrests, including of children. Since the opening of the investigation at the ICC, there have been multiple periods of heightened violence by Israeli forces against civilians that has drawn the attention – and condemnation – of the international community. In the spring of 2021, a time when protests and international solidarity actions against forced evictions in Sheikh Jarrah coincided with Ramadan, Israeli security forces deployed weaponry, tear gas and skunk water against protestors and carried out mass arrests. Indeed, 2021 marked the highest number of Palestinians killed – including the highest number of children killed – due to confrontations with Israelis since 2014. Over this last month, again coinciding with Ramadan, Israeli security forces have entered Muslim religious sites, fired upon civilians, and arrested hundreds.⁵² This coincides with statements by senior Israel officials signalling an increase in the use of violence by Israeli forces against Palestinian civilians in the name of fighting “terrorism”, including a joint statement from the Prime Minister and the Minister of Defense last month that [t]here are no restrictions in this war nor will there be.”⁵³

Israeli-Jewish settlement expansion and settler-violence: Despite its status as occupied territory and the probation of an occupying power to transfer its population into such territory, there are now 230,000 Jewish settlers living in East Jerusalem – in Jewish-only settlements.⁵⁴ With the increased number of Jewish settlers in East Jerusalem, there has also been an uptick in violence by them (and Israeli security forces) against Palestinian civilians.⁵⁵ Adding to the injustice, the settlers enjoy a far higher quality of life than Palestinians, with better access to municipal services: while 75% of Palestinian families live below the poverty rate compared to 22% of Jewish families in East Jerusalem.⁵⁶

d. The Crimes for Investigation and Prosecution

Salah Hammouri’s case, both emblematic of the violations being committed daily against Palestinians in Jerusalem and a warning of new tactics by the Occupying Power to further

Palestinian family reunification, Al-Monitor, 20 March 2022, <https://www.al-monitor.com/originals/2022/03/israeli-citizenship-law-blocks-palestinian-family-reunification#ixzz7SaDEpgkf>.

⁵² See, *Israeli forces raid Al-Aqsa mosque, over 40 Palestinians injured*, Aljazeera, 29 April 2022, <https://www.aljazeera.com/news/2022/4/29/dozens-injured-in-israeli-raid-on-al-aqsa-mosque-compound>.

⁵³ Government Press Office (Israel), *PM Bennett’s Statement Following Tel Aviv Terror Attack*, 8 April 2022, <https://www.gov.il/en/departments/news/pmbennette08042022>. See Al-Haq, *Al-Haq Calls for Immediate Effective Measures by the International Community to Halt Escalating Israeli Violence against Palestinians*, 18 April 2022, https://www.alhaq.org/advocacy/19927.html#_ftnref5.

⁵⁴ A/HRC/49/87, para. 48.

⁵⁵ See, e.g., United Nations OCHA, *West Bank: Escalation of Violence 13 April – 21 May 2021: Attacks by Settlers*, 6 June 2021, <https://www.ochaopt.org/content/west-bank-escalation-violence-13-april-21-may-2021>; see also Mohammed El-Kurd, *As I Write, Settlers and Police Are Attacking My Neighbors in Sheikh Jarrah*, The Nation, 15 February 2022, <https://www.thenation.com/article/world/sheikh-jarrah-protest-gvir/>.

⁵⁶ A/HRC/49/87, para. 48, 53.

reduce the Palestinian population, evidences the widespread and systematic practice of illegal population transfer and demographic manipulation, as manifested through Israel's laws, policies, and practices, to maintain an institutionalized regime of racial domination and oppression over the Palestinian people. It is urgent that the crimes being committed against Palestinian civilians on a daily basis, including Mr. Hammouri, be investigated – and readied for prosecution – without further delay.

Based on the information provided herein, for the acts committed in the context of an international armed conflict by virtual of *inter alia* Israel's prolonged belligerent occupation of Palestine, we ask that you include as part of the investigation the **war crimes** of forcible transfer of the population of the occupied territory (art. 8(2)(b)(viii) and 8(2)(a)(vii)), transfer by the Occupying Power of parts of its civilian population into the territory it occupies (art. 8(2)(b)(viii)), and prolonged and arbitrary detention without charge (art. 8(a)(vi)).

Further, as the revocation of Palestinian Jerusalemites' residency, as well as the forced evictions underway in Sheikh Jarrah and Silwan, among other neighborhoods in East Jerusalem, and the denial of fundamental rights including the right to family, freedom of movement, freedom of association, assembly, expression and opinion, and right to education, are part of an ongoing, widespread and systematic attack against Palestinian civilians, we urge you to frame the violations as what they are: the **crimes against humanity** of deportation or forcible transfer (art. 7(1)(d)), persecution (art. 7(1)(h)), apartheid (art. 7(1)(j)) and other inhumane acts causing great suffering or serious injury to *inter alia* mental health (art. 7(1)(k)).

As part of that investigation, we call on your Office to:

1. Publicly condemn the multi-faceted efforts to remove Palestinians from Jerusalem, of which Mr. Hammouri's case is both a stark example and a warning of new tactics, and urgently investigate this case within the Situation of Palestine;
2. Warn those perpetrators most responsible for the conduct in question that their policies and actions in occupied East Jerusalem, which aim at manipulating the city's demographic character in favour of Israeli-Jewish domination, may constitute war crimes and crimes against humanity within the jurisdiction of the Court;
3. Call upon all parties to comply with international human rights, humanitarian and criminal law, in their policies, practices, laws and judicial rulings;
4. Operating under Part 9 of the Rome Statute, call upon ICC States Parties (including but not limited to Palestine, Jordan and France) to cooperate with your Office in providing any documents relevant to the investigation of forced evictions and residency revocations in East Jerusalem; and
5. Take any appropriate action, within the confines of the exercise of your mandate under the Rome Statute, to prevent the Palestinian protected population, including Mr. Hammouri, from being displaced or deported from their home city of Jerusalem, and from enduring denials of fundamental rights, including the right to be free from detention without charge.

Hastening the investigation in the Situation in Palestine is integral to safeguarding the lives and freedom of Palestinians in Jerusalem, like Mr. Hammouri. Accordingly, we urge your office to prioritize this investigation, with adequate resources and meaningful victim participation, with a view to moving towards the issuance of arrest warrants against those who bear the greatest responsibility for the long-running war crimes and crimes against humanity committed against Palestinian civilians – a protected population – without further delay.

Should you require any further information, including further information from Mr. Hammouri, we stand ready to assist.

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