

THE JERUSALEM MAGISTRATE'S COURT

The State of Israel

v.

Ascherman, Arik; Omer, Ori; Hamburger, Shai Eliezer

003751/03 Peh

**AFFIDAVIT CONCERNING THE STATUS OF FORCED EVICTIONS UNDER
INTERNATIONAL LAW**

**Submitted by
The Centre on Housing Rights and Evictions (COHRE) and
The International Commission of Jurists (ICJ)**

TABLE OF CONTENTS

	Paragraph
INTRODUCTION	1-3
SITUATIONAL BACKGROUND	4-6
FORCED EVICTION: DEFINITION	7
THE PROHIBITION AGAINST FORCED EVICTION UNDER INTERNATIONAL LAW	8-11
• The Universal Declaration of Human Rights	12-13
• The International Covenant on Civil and Political Rights	14-28
• The International Covenant on Economic, Social and Cultural Rights	29-37
• The International Convention on the Elimination of all Forms of Racial Discrimination	38-41
• The Convention on the Rights of the Child	42-45
• The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	46-49
• The Convention Concerning Indigenous and Tribal Peoples in Independent Countries	50-51
THE PROHIBITION AGAINST FORCED EVICTIONS UNDER INTERNATIONAL HUMANITARIAN AND INTERNATIONAL CRIMINAL LAW	52-53
• The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War	54-58
• International Criminal Liability	59-69
REGIONAL INSTRUMENTS AND JURISPRUDENCE RELEVANT TO THE PROHIBITION AGAINST ISSUE OF FORCED EVICTIONS	70
• The European Convention for the Protection of Human Rights and Fundamental Freedoms	71-73
• The American Convention on Human Rights	74-75
• The American Declaration of the Rights and Duties of Man	76-77
• The African Charter on Human and People's Rights	78-79
OTHER SOURCES OF LAW DEDICATED TO THE PROHIBITION AGAINST FORCED EVICTION	80-88
CONCLUSION	89-91

INTRODUCTION

1. The Centre on Housing Rights and Evictions (hereinafter “COHRE”) is an independent international non-governmental organization mandated to protect and promote human and housing rights throughout the world. COHRE is based in Geneva, Switzerland with offices in the United States, Brazil, Ghana, Thailand and Australia. COHRE is registered in The Netherlands, Brazil, and the United States as a non-profit organization. COHRE possesses Special Consultative Status with the United Nations, Consultative Status with the Council of Europe and the Organization of American States, and Observer Status with the African Commission on Human and Peoples’ Rights.

2. The International Commission of Jurists (hereinafter “ICJ”) is an independent human rights non-governmental organization dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. The ICJ is based in Geneva, Switzerland with 37 National Sections and 45 Affiliated Organisations located throughout the world. The ICJ possesses Special Consultative Status with the United Nations and Consultative Status with the Council of Europe and the Organisation of African Unity.

3. The COHRE and The ICJ respectfully submit this affidavit, which concerns the status of forced evictions under international law and practice, to the Jerusalem Magistrate's Court currently adjudicating over the case of *The State of Israel v. Ascherman, Omer, and Hamburger*.

SITUATIONAL BACKGROUND

4. In 1967, the State of Israel unilaterally annexed a section of the West Bank, including the Old City of Jerusalem, and incorporated it into the Municipality of Jerusalem. Over decades, Israeli authorities have gradually transformed the ethnic character of this annexed territory, commonly referred to as East Jerusalem, from Arab to Jewish. While this transformation has not been formally expressed by the State, in the words of Amir Cheshin, Arab Affairs advisor to the former Mayor of Jerusalem, Teddy Kollek, in, *Separate and Unequal: The Inside Story of Israeli Rule in East Jerusalem*,

*Israel’s leaders adopted two basic principles in their rule of East Jerusalem. The first was to rapidly increase the Jewish population in East Jerusalem. The second was to hinder growth of the Arab population and to force Arab residents to make their homes elsewhere.*¹

5. In accomplishing the aforementioned transformation, substantial tracts of Palestinian land and structures were confiscated through a 1943 Israeli law that permits land expropriation for such “public” need as the Minister might decide. On the basis of this and other restrictions, Palestinian land has been expropriated and homes demolished in favour of domiciles and settlements occupied by Jewish Israelis. Land development

¹ Amir S. Chesin, Bill Hutman and Avi Melamed, *Separate and Unequal: The Inside Story of Israeli Rule in East Jerusalem*, Cambridge, MA: Harvard University Press, 1999 at 10.

for Palestinian use has been severely restricted. While Israelis possess little difficulty in obtaining building permits for use in East Jerusalem, Palestinians are denied equal treatment. As a result of such restrictions, many Palestinians in East Jerusalem have built “illegal” domiciles from which they have been forcibly evicted by the Israeli authorities prior to the structure’s demolition. Often, the occupants of buildings slated for demolition have been given only 15 minutes to gather their life’s possessions and vacate the premises.²

6. While building permits may be a useful means to regulate safety and other municipal housing issues, the forced eviction of Palestinians in East Jerusalem denied such permits prior to the immediate demolition of their homes is grossly disproportionate sanction rooted in discriminatory practices of the Israeli authorities. Indeed, this assertion was explicitly supported in 1988 by Haim Miller, former Deputy Mayor of Jerusalem who advised, “I don’t sign demolition orders for Jewish homes, only for Arabs.”³

FORCED EVICTION: DEFINITION

7. Also known as forced relocation, forced displacement, internal displacement and involuntary resettlement, “forced eviction” may be defined as the permanent or temporary removal, against their will, of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other due process protections.⁴

² *Ha'Aretz* Newspaper “Tactics of War Against Civilians” 15 April 2001. See also *The Israeli Committee Against Housing Demolitions* website at www.icahd.org. See also, Amnesty International - Report - “Israel” and the Occupied Territories, *Demolition and Dispossession: the Destruction of Palestinian Homes* MDE 15/05/99, (1999). See also United Nations General Assembly Resolution 50/22 (1995) in which recalled its resolutions 36/120 E of 10 December 1981, 37/123 C of 16 December 1982, 38/180 C of 19 December 1983, 39/146 C of 14 December 1984, 40/168 C of 16 December 1985, 41/162 C of 4 December 1986, 42/209 D of 11 December 1987, 43/54 C of 6 December 1988, 4/40 C of 4 December 1989, 45/83 C of 13 December 1990, 46/82 B of 16 December 1991, 47/63 B of 11 December 1992, 48/59 A of 14 December 1993 and 49/87 A of 16 December 1994, in which it determined that all legislative and administrative measures and actions taken by Israel, the occupying Power, which had altered or purported to alter the character and status of the Holy City of Jerusalem... and the proclamation of Jerusalem as the capital of Israel, were null and void and must be rescinded forthwith. General Assembly resolution 50/22 (1995) went on to state that “the decision of Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem is illegal and therefore null and void and has no validity whatsoever.”

³ *Yediot Aharonot* newspaper, 7 February 1998.

⁴ See generally, The United Nations Committee on Economic, Social and Cultural Rights, General Comment 7, “The Right to Adequate Housing (Art. 11 (1) of the *Covenant*): Forced Evictions” U.N. Doc. E/C.12/1997/4 (1997). See also and throughout, “Declaration of International Law Scholars on Forced Relocation” originally written and submitted for *Doe v. Unocal*, 110 F.Supp.2d 1294 (C.D. Cal. 2000), (2002).

THE PROHIBITION AGAINST FORCED EVICTION UNDER INTERNATIONAL LAW

8. The prohibition against forced eviction is a well-defined, universal, and obligatory international human rights standard. The prohibition has been set forth through numerous international instruments and is established as a norm of customary international law. As particularly egregious violation of international law, forced eviction implicates a variety of fundamental human rights including the right to liberty and security of the person, the right to be free from... exile, the right to be free from arbitrary interference with one's privacy, family and home, the right to freedom of movement and residence, the right to human dignity and the right to an adequate standard of living, including housing.

9. This affidavit examines the well-defined, universal, and obligatory standard prohibiting forced eviction. It reviews multilateral and regional instruments and jurisprudence in addition customary international law and practice, which clearly set forth a strong prohibition against forced eviction. This submission is properly before the Court as, through numerous actions of the State, Israel has undertaken legal obligations to govern its domestic affairs according to international human rights standards.

10. In 1979, Israel ratified the *International Convention on the Elimination of all forms of Racial Discrimination*⁵ (hereinafter "ICERD"). In 1991, Israel ratified the *International Covenant on Civil and Political Rights*⁶ (hereinafter "ICCPR"). On ratification, Israel made a reservation with regard to article 23 (marriage equality). Also in 1991, Israel ratified the *International Covenant on Economic, Social and Cultural Rights*⁷ (hereinafter "ICESCR"), the *Convention on the Rights of the Child*⁸ and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁹ (hereinafter "ICAT"). Upon ICAT ratification, Israel made reservations in respect of article 20 (inquiry procedure), article 30 (inter-State complaints procedure) and did not make a declaration in favour of articles 21 and 22 (individual complaints procedure).

11. Given the international human rights obligations undertaken by Israel, relevant provisions of the following instruments must be considered when evaluating the Government of Israel's policy and practice with regard to the forced eviction of Palestinians from East Jerusalem. As cited below, in determining whether such evictions constitute unlawful forced evictions in violation of international law, the Court should consider: (i) Whether minimum procedural (due process) guarantees were/are provided

⁵ Adopted by U.N.G.A. res. 2106 (XX), 21 December 1965, entered into force 4 January 1969.

⁶ Adopted and opened for signature, ratification and accession by U.N.G.A. Res. 2200A (XXI), 16 December 1966, entry into force 23 March 1976.

⁷ Adopted and opened for signature, ratification and accession by U.N.G.A. Res. 2200A (XXI), 16 December 1966, entry into force 3 January 1976.

⁸ Adopted and opened for signature, ratification and accession by U.N.G.A. Res. 44/25 of 20 November 1989, entry into force 2 September 1990.

⁹ Adopted and opened for signature, ratification and accession by U.N.G.A. Resolution 39/46 of 10 December 1984, entry into force 26 June 1987.

prior such evictions; (ii) The manner in which evictions were/are carried out, (whether principles of international law were/are violated); and (iii) Whether the effects of the evictions negatively impact on the enjoyment of other internationally recognised human rights.

The Universal Declaration of Human Rights

12. The *Universal Declaration of Human Rights*¹⁰ (hereinafter “*UDHR*”) is the most well-recognized and respected elaboration of international human rights norms. Embodying universal international human rights standards, as affirmed by the *Proclamation of Teheran*,¹¹

*(the UDHR) states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community;”*¹²

13. Forced eviction *prima facie* violates numerous provisions of the *UDHR*. For example, *UDHR* Article 1 recognizes that “(a)ll human beings are born free and equal in dignity and rights.” Article 3 guarantees the right to “life, liberty and the security of the person.” Article 9 provides that “(n)o one shall be subjected to... exile.” Article 12 grants every individual the right to be free from “arbitrary interference with his privacy, family, home or correspondence...” Article 13(1) provides that “(e)veryone has the right to freedom of movement and residence within the borders of each State.” Finally, Article 25 affirms that “(e)veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care...”

The International Covenant on Civil and Political Rights

14. The *ICCPR* formally codifies many of the civil and political rights set forth in the *UDHR*. As a State party to the *ICCPR*, Israel is bound to comply with the State party obligations contained within this international treaty.

15. Forced eviction constitutes numerous *prima facie* violations under the *ICCPR*, including: Article 9(1), “the right to liberty and security of person;” Article 12(1), “(e)veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and the freedom to choose his residence;” Article 12(3), which notes that *ICCPR* rights “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present *Covenant*;” Article 17(1), “(n)o one shall be subjected to

¹⁰ Adopted 10 December 1948, U.N.G.A. Res. 217A (III).

¹¹ The International Conference on Human Rights at Teheran, 13 May 1968, para 2.

¹² *Ibid.* at para 2. See generally I. Brownlie, *Principles of Public International Law* 574-575 (5th ed. 1998) and R. Jennings and A. Watts eds., *Oppenheim’s International Law* 1001-1005 (9th ed., 1996).

arbitrary or unlawful interference with his privacy, family, home or correspondence...;” and Article 17(2), “(e)veryone has the right to the protection of the law against such interference or attacks.

16. The fundamental duty of States parties to guarantee the aforementioned rights without discrimination is established through Article 2(1) of the *ICCPR*:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

17. Further, the aforementioned right to equality and to equal protection before the law is reiterated in *ICCPR* Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

18. The United Nations Human Rights Committee, (hereinafter “HRC”) was established to monitor State party compliance with the *ICCPR*. The HRC performs these tasks through activities that include: the supervision of a State party reporting procedure; the issuance of General Comments, which add clarification to various *ICCPR* rights and obligations; and the development of jurisprudence through an *ICCPR* Optional Protocol adjudicative mechanism.

19. Through *Communication No 687/1996*,¹³ the HRC considered a claim analogous to forced eviction and held that,

... it is necessary for any interference in the home not only to be lawful, but also not to be arbitrary. (T)he concept of arbitrariness... is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.

20. The holding in *Communication No 687/1996* closely followed a 1994, HRC General Comment where acts of forced eviction were strongly condemned in similar language.¹⁴

¹³ See U.N. Ref. Doc. CCPR/C/71/D/687/1996.

¹⁴ HRC, General Comment 16, U.N. Doc. HRI/GEN/1/Rev.1 (1994).

21. Through *Páez v. Colombia*,¹⁵ the HRC provided an expansive interpretation to ICCPR Article 9, advised that the right to “security of the person” was not limited to situations concerning the deprivation of liberty,

The first sentence of article 9 does not stand as a separate paragraph. Its location as a part of paragraph one could lead to the view that the right to security arises only in the context of arrest and detention.... The Universal Declaration of Human Rights, in article 3, refers to the right to life, the right to liberty and the right to security of the person. These elements have been dealt with in separate clauses in the Covenant. Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty.... It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because that he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant.”¹⁶

22. As confirmed in *Dias v. Angola*,¹⁷

... article 9(1) of the Covenant protects the right to security of person... outside the context of formal deprivation of liberty. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction would render totally ineffective the guarantees of the Covenant.”¹⁸

23. Finally, as stated in *Chongwe v. Zambia*,¹⁹

The interpretation of article 9 does not allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction.”²⁰

¹⁵ Communication N° 195/1985, U.N. Ref. Doc., CCPR/C/39/D/195/1985, (1990).

¹⁶ *Ibid.* at para. 5.5.

¹⁷ Communication N° 711/1996, U.N. Ref. Doc., CCPR/C/68/D/711/1996, (2000).

¹⁸ *Ibid.* at para. 8.3.

¹⁹ Communication No. 821/1998, U.N. Ref. Doc., CCPR/C/70/D/821/1998, (2000).

²⁰ *Ibid.* at para. 5.3.

24. In its 1998 Concluding Observations with regard to the initial *ICCPR* compliance report submitted by Israel, the HRC expressed:

*serious concern over deeply imbedded discriminatory social attitudes, practices and laws against Arab Israelis that have resulted in a lower standard of living compared with Jewish Israelis, as is evident in their ... access to housing.*²¹

25. Further,

*In regard to Palestinians who are resident in East Jerusalem, the Committee is concerned that the increasingly restrictive conditions for maintaining the right to permanent residence... and the difficulty experienced by non-Jews in obtaining building permits and accommodation....*²²

26. Finally,

*The Committee deplores the demolition of Arab homes as a means of punishment. It also deplores the practice of demolitions, in part or in whole, of "illegally" constructed Arab homes. The Committee notes with regret the difficulties imposed on Palestinian families seeking to obtain legitimate construction permits. The Committee considers the demolition of homes to conflict directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), the freedom to choose one's residence (art. 12) and equality of all persons before the law and equal protection of the law (art. 26).*²³

27. The HRC adding further legal clarity to the situation of forced eviction through a 2001 General Comment,²⁴ which affirmed that the deportation or forcible transfer of population “cannot be made subject to lawful derogation under *ICCPR* article 4,”²⁵ which allows for certain specific derogations of *ICCPR* rights in times “of public emergency which threatens the life of the nation.”

28. According to the aforementioned principles of international law, jurisprudence and HRC General Comment and Concluding Observations, the forced evictions in East Jerusalem violate the *ICCPR*.

²¹ Concluding Observations, HRC: Israel, 18/08/98, CCPR/C/79/Add.93 at para. 12.

²² *Ibid.* at para. 23.

²³ *Ibid.* at para. 24.

²⁴ HRC, General Comment No. 29, *States of Emergency*, U.N. Doc. CCPR/C/21/Rev.1/Add.11, (2001).

²⁵ *Ibid.* at para. 13.

The International Covenant on Economic, Social and Cultural Rights

29. The *ICESCR* codifies the economic, social and cultural rights set forth in the *UDHR*. As a State party to the *ICESCR*, Israel is bound to comply with the State party obligations contained within this international treaty. The forced eviction and demolition of Palestinian homes in East Jerusalem by the Israeli authorities due to municipal building permit violations, *prima facie* violates the *ICESCR*.

30. *ICESCR* Article 11(1) states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate... housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right....

31. The United Nations Committee on Economic, Social and Cultural Rights, (hereinafter “CESCR”) was established to monitor State party compliance with the *ICESCR*. The CESCR performs these tasks through activities that include: the supervision of a State party reporting procedure; and the issuance of General Comments which add clarification to various *ICESCR* rights and obligations. Repeatedly, the CESCR has condemned the practice of forced evictions. For example, in 1990, the CESCR stated that international agencies should “scrupulously avoid involvement in projects which involve large scale evictions or displacement of persons without the provision of all appropriate protection and compensation.”²⁶ In 1991, the CESCR pronounced “that instances of forced eviction are *prima facie* incompatible with the requirements of the *Covenant* and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law,”²⁷ a position that was reiterated in 1997.²⁸ Further, the CESCR recognized the profound implications of forced evictions in noting that,

*appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights.*²⁹

²⁶ CESCR, General Comment No. 2, *International Technical Assistance Measures*, U.N. Doc. E/1990/23/annex III (1990) at para. 6.

²⁷ CESCR, General Comment No. 4, *The Right to Adequate Housing*, U.N. Doc. HRI/GEN/1/Rev. 3 (1994) at para. 18.

²⁸ CESCR, General Comment No. 7, *The Right to Adequate Housing (art. 11.1 of the Covenant): Forced Evictions*, U.N. Doc. E/C.12/1997/4 (1997).

²⁹ *Ibid.* at para. 15.

32. Further, the CESCR noted “the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.”³⁰

33. Under *ICESCR* Article 2(1), States parties obligated themselves “to take steps... with a view to achieving progressively the full realization of the rights recognized in the... *Covenant*. Given the directive of this provision, the forced evictions of Palestinians in East Jerusalem may be viewed as “retrogressive.” On this issue, the CESCR advised that, deliberately retrogressive measures amount to violations of the *Covenant* unless “fully justified by reference to the totality of the rights provided for in the *Covenant* and in the context of the full use of the maximum available resources.”³¹

34. With regard to the aforementioned issue, in its 1998 Concluding Observations concerning the *ICESCR* compliance report submitted by Israel, the CESCR advised that it was,

*deeply concerned about the adverse impact of the growing exclusion faced by Palestinians in East Jerusalem from the enjoyment of their economic, social and cultural rights. The Committee is also concerned over the continued Israeli policies of building settlements to expand the boundaries of East Jerusalem and of transferring Jewish residents into East Jerusalem with the result that they now outnumber the Palestinian residents.*³²

35. Further,

*The Committee deplores the continuing practices of the Government of Israel of home demolitions, land confiscations... and its adoption of policies which result in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city.*³³

36. The CESCR reiterated this same position in its 2003 Concluding Observations concerning the *ICESCR* compliance report submitted by Israel, the CESCR advised of its

grave concern about the continuing practices by the State party of home demolitions, land confiscations and restrictions on residency rights, and its adoption of policies resulting in substandard housing and living

³⁰ *Ibid.* at para 4.

³¹ CESCR, General Comment 3, *The Nature of States Parties Obligations (Art. 2, para.1 of the Covenant)*, U.N. Doc. HRI/GEN/1/Rev.1 at 45 (1994) at para. 9.

³² Concluding Observations of the CESCR: Israel, 04/12/98, U.N. Doc. E/C.12/1/Add.27 at para. 21.

³³ *Ibid.* at para. 21.

*conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city.*³⁴

37. According to the aforementioned principles of international law, CESCR General Comments and Concluding Observations, the forced evictions in East Jerusalem violate the *ICESCR*.

The International Convention on the Elimination of all Forms of Racial Discrimination

38. Article 1(1) of the *ICERD* defines racial discrimination as: “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” As a State party to the *ICERD*, Israel legally obliged itself to,

*... engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*³⁵

*... take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists...;*³⁶ and

*... guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... (t)he right to housing.*³⁷

39. Further, under *ICERD* Article 6, Israel undertook to,

assure to everyone within (its) jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

³⁴ Concluding Observations of the CESCR: Israel. 23/05/2003, U.N. Doc. E/C.12/1/Add.90 at para 26.

³⁵ *ICERD* Article 2(1).

³⁶ *Ibidm.*

³⁷ *Ibid.* at Article 5.

40. The United Nations Committee on the Elimination of Racial Discrimination (hereinafter “CERD”) was established to monitor State party compliance with the *ICERD*. The CERD performs these tasks through activities that include: the supervision of a State party reporting procedure; the issuance of General Comments which add clarification to various *ICERD* rights and obligations; and the adjudication of State-to-State and individual/group complaints. In its 1998 Concluding Observations concerning the *ICERD* compliance report submitted by Israel, the CERD advised that,

*Israeli settlements in the Occupied Palestinian Territory are not only illegal under contemporary international law but are an obstacle to peace and to the enjoyment of human rights by the whole population in the region, without distinction as to national or ethnic origin.... Accordingly, the Committee calls for a halt to the demolition of Arab properties in East Jerusalem and for respect for property rights irrespective of the ethnic origin of the owner.*³⁸

41. According to the aforementioned principles of international law and CERD Concluding Observations, the forced evictions in East Jerusalem violate the *ICERD*.

The Convention on the Rights of the Child

42. Under Article 16 of the *Convention on the Rights of the Child*, “No child shall be subjected to arbitrary or unlawful interference with his or her... home....”

43. The United Nations Committee on the Rights of the Child (hereinafter “CRC”) was established to monitor the State party *Convention on the Rights of the Child* implementation efforts and promote compliance with same. The CRC performs these tasks through activities that include: the supervision of a State party reporting procedure; and the issuance of General Comments which add clarification to various *Convention On The Rights Of The Child* rights.

44. In its 2002 Concluding Observations concerning the State party report of Israel under the *Convention on the Rights of the Child*, the CRC advised of its deep concern over “the large-scale demolition of houses and infrastructure in the Occupied Palestinian Territories, which constitutes a serious violation of the right to an adequate standard of living for children in those territories.”³⁹

45. According to the aforementioned principles of international law and CRC Concluding Observations, the forced evictions in East Jerusalem violate the *Convention on the Rights of the Child*.

³⁸ Concluding Observations of the CERD: Israel, 30/03/98, U.N. Doc. CERD/C/304/Add.45 at para. 10-11.

³⁹ Concluding Observations of the CRC: Israel, 09/10/2002, U.N. Doc. CRC/C/15/Add.195 at para. 50.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

46. As a party to the *ICAT*, Israel is legally obligated to take effective legislative, administrative, judicial or other measures to prevent acts of torture and acts of cruel, inhuman or degrading treatment or punishment.⁴⁰

47. The United Nations Committee Against Torture (hereinafter “CAT”) was established to monitor State party compliance with the *ICAT*. The CAT performs these tasks through activities that include: the supervision of a State party reporting procedure; the issuance of General Comments which add clarification to various *ICAT* rights and obligations; the management of an inquiry procedure and the examination of inter-state and individual complaints.

48. In its 2001 Concluding Observations concerning the State party report of Israel under the *ICAT*, the CAT advised of its concern about “Israeli policies on house demolitions, which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention).⁴¹” This conclusion was supported through international jurisprudence. In the 2002 case of *Hajrizi Dzemajl et al. v. Yugoslavia*,⁴² the CAT found that the burning and destruction of a Roma settlement constituted acts of cruel, inhuman or degrading treatment or punishment in the sense of Article 16 of the Convention.

49. According to the aforementioned principles of international law, CAT Concluding Observations and jurisprudence, the forced evictions in East Jerusalem violate the *ICAT*.

The Convention Concerning Indigenous and Tribal Peoples in Independent Countries

50. *The Convention Concerning Indigenous and Tribal Peoples in Independent Countries*⁴³ (hereinafter “*ILO Convention*”) affirms the prohibition against forced eviction in the context of indigenous peoples. *ILO Convention* Article 14 recognizes that “(t)he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized.” To protect these rights, the *ILO Convention* places restrictions on the relocation of indigenous peoples. Article 16 is particularly significant in this regard:

the peoples concerned shall not be removed from the lands which they occupy. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such

⁴⁰ See generally, *supra* note 9.

⁴¹ Conclusions and Recommendations of the CAT: Israel, 23/11/2001, U.N. Doc. CAT/C/XXVII/Concl.5 at para. 6.

⁴² Communication No. 161/2000: Yugoslavia, UN Doc. CAT/C/29/D/161/2000 (2002).

⁴³ Adopted June 27, 1989, LXXII ILO Off. Bull., Ser. A no. 2 (1989).

relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

51. While Israel is not party to the *ILO Convention* and is thus not necessarily bound to its provisions, mention is made of this international instrument in order to further demonstrate the international legal prohibition against forced eviction.

THE PROHIBITION AGAINST FORCED EVICTIONS UNDER INTERNATIONAL HUMANITARIAN AND INTERNATIONAL CRIMINAL LAW

52. Through successive United Nations General Assembly and Security Council Resolutions the acquisition of East Jerusalem by Israel during the June 1967 Six-Day War has been recognised as illegal under international law.⁴⁴

53. Acknowledging that, in times of crisis and conflict, proportionate measures restricting certain human rights are justifiable, Professor Tom Hadden and Dr. Colin Harvey qualified such restrictions in the *International Review of the Red Cross* by recognising that:

*(i) in the law of conflict there is an express prohibition of the forced displacement or transfer of civilians during armed conflict other than on grounds of military necessity. There is also an express prohibition of certain forms of forced eviction by armed attack, which is treated both as a war crime and a crime against humanity.*⁴⁵

The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War

54. Another treaty that applies to the situation of forced evictions in East Jerusalem is the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*⁴⁶ (hereinafter *Fourth Geneva Convention*) an instrument ratified by Israel in 1951. According to Article 49,

⁴⁴ See generally, U.N.S.C. Resolutions 242 (1967), U.N. Doc. S/RES/242, 252 (1968), U.N. Doc. S/RES/252, 267 (1969), U.N. Doc. S/RES/267, 271 (1969), U.N. Doc. S/RES/269, 298 (1971), U.N. Doc. S/RES/298, 465 (1980), U.N. Doc. S/RES/465, 476 (1980), U.N. Doc. S/RES/276, 478 (1980), U.N. Doc. S/RES/478, 497 (1981), U.N. Doc. S/RES/497. See also U.N.G.A. Res. 57/126, (2003), U.N. Doc. A/RES/57/126.

⁴⁵ T. Hadden & C. Harvey, "The Law of Internal Crisis and Conflict", *International Review of the Red Cross*, 833, 31 March 1999, 119-133, (<http://www.icrc.org>).

⁴⁶ Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949, 75 U.N.T.S. 287, entered into force 21 October 1950.

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.... The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

55. Further, according to Article 53,

*(a)ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.*⁴⁷

56. Based on zoning violations, the forced evictions in East Jerusalem have not arisen in response to an absolute military necessity.

57. Under the aforementioned principles of international law, the forced evictions in East Jerusalem constitute either a breach or grave breach of international humanitarian law.

58. It should also be pointed out that even if the international community did not consider East Jerusalem an occupied territory, the prohibition against forced evictions would remain. This contention is based on Article 17 of the *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*,⁴⁸ which states that,

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

International Criminal Liability

59. From the time of World War II, acts of forced eviction have given rise to criminal liability under international law. In the context of international criminal law, acts of forced eviction may be classified as a crime against humanity. While, under international law, acts of forced eviction originally required a nexus to armed conflict, this requirement is no longer recognized. Further, the term “deportation” has been extended to include the

⁴⁷ Note also that Article 147 defines a number of “grave breaches” of the *Fourth Geneva Convention*. Such grave breaches include, “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

⁴⁸ Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, entry into force 7 December 1978.

forcible transfer of populations regardless of whether such transfers extend beyond State borders.

60. *The Charter for the International Criminal Tribunal at Nuremberg*⁴⁹ set forth a general prohibition against forced eviction. Due of the nature of the Tribunal, the prohibition against forced eviction was set forth within the definition of war crimes and crimes against humanity. Article 6(b) defines war crimes to include “ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory” as a war crime. Article 6(c) defines crimes against humanity as “enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war...” In its judgment, the International Military Tribunal at Nuremberg recognized that acts of forced eviction against civilian populations constituted war crimes and crime against humanity.⁵⁰

61. Through the *Affirmation of the Principles of International Law recognised by the Charter of the Nuremberg Tribunal*,⁵¹ the United Nations General Assembly affirmed that *The Charter for the International Criminal Tribunal at Nuremberg* and the judgment of the Tribunal constitutes international law.

62. Further, *Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Humanity*⁵² (hereinafter “*Control Council Law No. 10*”) also prohibits acts of forced eviction. *Control Council Law No. 10*, Article II(1)(b) defines war crimes as “atrocities or offences against persons or property, constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose of civilian population from occupied territory...” Further, Article II(1)(c) defines crimes against humanity as “atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhuman acts committed against any civilian population...”

63. Subsequent developments since the Nuremberg era have affirmed the prohibition against forced eviction under international criminal law. In 1993, the United Nations Security Council adopted the *Statute of the International Criminal Tribunal for the Former Yugoslavia*⁵³ (hereinafter “*ICTY*”). *ICTY* Article 5 authorizes the International Criminal Tribunal for the former Yugoslavia to prosecute persons responsible for the following crimes when committed in armed conflict and directed against a civilian population: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts.

⁴⁹ *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal at Nuremberg* (the London Agreement), signed and entered into force on 8 August 1945, 82 U.N.T.S. 279.

⁵⁰ *The Nurnberg Trial*, 6 F.R.D. 69, 116-120, 126-131 (1946).

⁵¹ Resolution 95 (I) (1946).

⁵² Adopted 20 December 1945, 3 Official Gazette Control Council for Germany 50-55 (1946) Sess., Supp. No. 12, U.N. Doc. A/1316 (1950).

⁵³ Report of the Secretary-General Pursuant to Paragraph 2 of U.N. Security Council Resolution 808, U.N. GAOR, May 19, 1993, U.N. Doc. S/25704 (1993).

64. International Criminal Tribunal for the former Yugoslavia jurisprudence has clarified the terms “crimes against humanity” and “deportation.” In the *Tadic*⁵⁴ case, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia elaborated on the fact that crimes against humanity may be committed notwithstanding the absence of any connection to an armed conflict,

*It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict.*⁵⁵

65. In the *Nikolic*⁵⁶ case, International Criminal Tribunal for the former Yugoslavia Trial Chamber I found that acts of deportation include the transfer of individuals from one location to another within the same country. Such forced transfers of a civilian population constitute deportation and, therefore, a crime against humanity.

66. In 1994, the United Nations Security Council adopted the *Statute of the International Tribunal for Rwanda*⁵⁷ (hereinafter “ICTR”), an instrument that mirrors the *ICTY* except that it does not contain a reference to armed conflict. Thus, Article 3 authorizes the *ICTR* to prosecute persons responsible for the following crimes directed against a civilian population: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts.

67. In July 1998, the *Rome Statute of the International Criminal Court*⁵⁸ (hereinafter “*Rome Statute*”) was adopted. *Rome Statute* Article 7(1) provides that the deportation or forcible transfer of a population constitutes crimes against humanity. Article 7(2) defines “deportation or forcible transfer of population” to mean “forced displacement of the persons concerned by the expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”

68. Recognising that crimes against humanity do not necessarily have to occur during times of war, Article 1 of the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*,⁵⁹ further states that forced eviction may constitute a crime against humanity even if such acts do not constitute a violation of the domestic law of the country in which they were committed.

69. Under the aforementioned legal principles, the forced evictions in East Jerusalem constitute a violation of international criminal law.

⁵⁴ Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-T (2 October 1995).

⁵⁵ *Ibid.* at 35-6.

⁵⁶ Decision of Trial Chamber I – Review of Indictment Pursuant to Rule 61. IT-95-2-R61 (Oct. 20, 1995).

⁵⁷ U.N.S.C. Res. 955, 49 U.N. SCOR at 1, U.N. Doc. S/RES/955 (1994), 33 I.L.M. 1598 (1994).

⁵⁸ U.N. Doc. A/Conf. 183/9 (1998).

⁵⁹ Adopted and opened for signature, ratification and accession by U.N.G.A. Res. 2391 (XXIII), of 26 November 1968. Note that Israel is presently not a State party to this Convention.

REGIONAL INSTRUMENTS AND JURISPRUDENCE RELEVANT TO THE PROHIBITION AGAINST ISSUE OF FORCED EVICTIONS

70. In addition to being recognized through international law, the prohibition against forced eviction is well-recognized in numerous regional instruments and jurisprudence.

The European Convention for the Protection of Human Rights and Fundamental Freedoms

71. *The European Convention for the Protection of Human Rights and Fundamental Freedoms*⁶⁰ (hereinafter “*European Convention*”) is one of the most well-regarded regional human rights agreement. *European Convention* Article 3 affirms that “(n)o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Article 5 recognizes that “(e)veryone has the right to... security of the person.” Article 8(1) establishes that “(e)veryone has the right to respect for private and family life, his home and correspondence.” Article 8(2) adds that “(t)here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” In addition, Protocol No. 1 to the *European Convention*⁶¹ provides that “(e)very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.⁶²” Similarly, Protocol No. 4 to the *European Convention*⁶³ provides that “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.⁶⁴”

72. The European Commission of Human Rights (hereinafter “European Commission”), which was charged with overseeing compliance with the European Convention, has recognized that acts of forced relocation violate numerous provisions of this instrument. In *Cyprus v. Turkey*,⁶⁵ the European Commission found that the forcible eviction of persons from their homes, the refusal to let them return and the separation of families constituted a violation of *European Convention* Article 8. In another *Cyprus v. Turkey*,⁶⁶ the European Commission affirmed that the forced eviction of civilians, including the separation of families, constituted clear violations of Article 8(1). While the European Commission acknowledged that Article 8(2) allowed for derogations from

⁶⁰ Signed 4 November 1950, entered into force 3 September 1953, 213 U.N.T.S. 222, E.T.S. No. 5.

⁶¹ Protocol (No. 1) to the *Convention for the Protection of Human Rights and Fundamental Freedoms* as amended by Protocol No. 11, ETS No. 009 (1952).

⁶² *Ibid.* Article 1.

⁶³ Protocol (No. 4) to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, E.T.S. No. 46, (1968).

⁶⁴ *Ibid.* Article 2.

⁶⁵ 4 E.H.R.R. 482, (1982).

⁶⁶ 15 E.H.R.R. 509 (1993).

Article 8(1) in limited circumstances, this right of derogation could never justify the forced displacement of civilians.

73. In *Mentes and Others v. Turkey*,⁶⁷ *Akdivar and Others v. Turkey*⁶⁸ and *Selcuk and Asker v. Turkey*⁶⁹ the European Court of Human Rights affirmed the prohibition against forced eviction as set forth in the *European Convention*.

The American Convention on Human Rights

74. *The American Convention on Human Rights*⁷⁰ (hereinafter “*American Convention*”) also prohibits forced evictions. Under Article 5(1), “(e)very person has the right to have his physical, mental, and moral integrity respected.” Article 7(1) provides that “(e)very person has the right to... personal security.” Article 11(2) recognizes that “(n)o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence” Finally, Article 11(3) adds that “(e)veryone has the right to the protection of the law against such interference or attacks.”

75. The Inter-American Commission on Human Rights (hereinafter “*Inter-American Commission*”), the body charged with overseeing compliance with the *American Convention*, has recognized that forced eviction violates numerous provisions of same. In *Maria Mejia v. Guatemala*,⁷¹ the Inter-American Commission found that forced eviction violates the right of freedom of movement and the right to choose one’s residence as set forth in Article 22(1). Further, in *Finca La Exacta*⁷² the Inter-American Commission clarified that “the need for and type of force that should be used must be closely linked to specific facts in order to respect the principles of proportionality and necessity...”⁷³

The American Declaration of the Rights and Duties of Man

76. Additionally, the *American Declaration of the Rights and Duties of Man*⁷⁴ (hereinafter “*American Declaration*”) affirms the prohibition against forced eviction. Article I recognizes that “(e)very human being has the right to life, liberty and the security of his person.” Article VIII provides that “(e)very person has the right to fix his residence within the territory of the state of which he is a national, to move about freely and not to leave it except by his own free will.” Further, Article IX provides that

⁶⁷ 26 E.H.R.R. 595 (1997).

⁶⁸ 23 E.H.R.R. 143 (1996).

⁶⁹ 26 E.H.R.R. 477 (1998).

⁷⁰ Signed Nov. 22, 1969, entered into force July 18, 1978, O. A. S. Treaty Series No. 36, at 1, O. A. S. Off. Rec. OEA/Ser. L/V/II. 23 doc. rev. 2.

⁷¹ Case 10.533, Report No. 32/96, Inter-Am.C.H.R., OAE/Ser.L/V/II.95 Doc. 7 rev. at 370 (1997).

⁷² Report N° 57/02, Case 11.382, Guatemala (2002).

⁷³ See also Inter-American Commission on Human Rights, Third Report on the Situation of Human Rights in Colombia (1999); Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Guatemala, OEA/Ser. L/V/II. 83 (March 12, 1993); Inter-American Commission on Human Rights, Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser. L/V/II. 62, doc. 10, rev. 3, Nov. 29, 1983.

⁷⁴ O. A. S. Res. XXX, adopted May 2, 1948, O. A. S. Off. Rec. OEA7Ser. L/V. I. 4 Rev. (1965).

“(e)very person has the right to the inviolability of his home.” For these reasons, Article XI recognizes that “(e)very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”

77. The Inter-American Commission has determined that forced eviction also violates the *American Declaration*. In the *Yanomami Decision*,⁷⁵ the Brazilian government authorized the construction of a highway that would pass through territory inhabited by the Yanomami Indians. The construction of the highway and the massive influx of people to the area resulted in the forced abandonment of their homes, communities, and source of livelihood. On the basis of these facts, the Inter-American Commission found that the Government of Brazil violated the *American Declaration* rights to life, liberty, personal security (Article I), residence and movement (Article VIII), and the preservation of health and well-being (Article XI).

The African Charter on Human and People’s Rights

78. *The African Charter on Human and People’s Rights*⁷⁶ (hereinafter “*African Charter*”) also prohibits forced eviction. Article 5 provides that “(a)ll forms of exploitation and degradation of man particularly... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” Article 6 recognizes that “(e)very individual shall have the right to liberty and to the security of his person.” Finally, Article 12(1) provides that “(e)very individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.”

79. In the *Center for Economic and Social Rights and Social and Economic Rights Action Center (SERAC) v. Nigeria*,⁷⁷ the African Commission of Human & Peoples' Rights considered a situation wherein Nigerian security forces attacked, burned and destroyed several homes under the pretext of dislodging supporters of a non-violent campaign opposed to the destruction of the environment by oil companies. In this case, the African Commission was of the view that,

(a)t a very minimum, the right to shelter obliges the... government not to destroy the housing of its citizens.... The State’s obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs. The right to shelter even goes further than a roof over ones head. It extends to embody the individual’s right to be let alone and to live in peace....

⁷⁵ Res. No. 12/85, Case No. 7615, OAE/Ser.L/V/II.62, doc. 10 rev. 1 (1985).

⁷⁶ Adopted 27 June 1981, entered into force 21 October 1986, OAU Doc. CAB/LEG/67/3 rev. 5.

⁷⁷ Communication No. 155/96, Ref: ACHPR/COMM/A044/1.

OTHER SOURCES OF LAW DEDICATED TO THE PROHIBITION AGAINST FORCED EVICTION

80. Apart from its codification in multilateral instruments, the prohibition against forced eviction is firmly established in customary international law and international practice which attest to the universal and obligatory nature of this fundamental norm.

81. On numerous occasions, the United Nations and its affiliated agencies, have affirmed that forced eviction is a violation of international law. For example, the United Nations Commission on Human Rights has repeatedly recognized that “(t)he practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.”⁷⁸ In 1997, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities convened an Expert Seminar on Forced Evictions to prepare guidelines on development-based displacement.⁷⁹ These guidelines recognized that forced evictions give rise to numerous human rights violations and are thus inconsistent with international law. Accordingly, any State effort to remove a population from their homes and communities must comply with international human rights standards. In 1997, the Sub-Commission also adopted a resolution reaffirming that all people have the right to a secure place to live in peace and dignity, which includes the right not to be evicted arbitrarily or on a discriminatory basis from one’s home, land, or community.⁸⁰ Further, it reaffirmed that forced evictions can constitute gross violations of a broad range of human rights and that all States must take immediate measures at all levels to eliminate the practice of forced eviction.⁸¹

82. In 1995, the United Nations Secretary-General issued a report⁸² to the Sub-Commission on Prevention of Discrimination and Protection of Minorities on forced evictions which recognized that “(a)lthough some evictions are unavoidable and, under the law, acceptable and reasonable:

*the human cost of forced evictions, such as the loss of a secure, neighbourly environment and social network critical for survival, the breaking up of communities, the lack of access to employment and the loss of culturally or traditionally significant sites, can be so harsh and demeaning that any justification for evictions must be evaluated in these terms and in accordance with generally recognized principles of international law.*⁸³”

⁷⁸ Commission on Human Rights, Resolution 1993/77. See also Commission on Human Rights, Resolution 1992/10.

⁷⁹ See Comprehensive Guidelines on Development-Based Displacement, U.N. Doc. E/CN.4/Sub.2/1997/7.

⁸⁰ See U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1997/6.

⁸¹ See also Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolutions 1995/29, 1994/39, 1993/41, 1992/26/1991/12.

⁸² Report of the Secretary-General: Guidelines on International Events and Forced Evictions, U.N. Doc. E/CN.4/Sub.2/1995/13 (1995).

⁸³ *Ibid.* at para. 7.

83. Accordingly, an obligation exists on States to undertake measures to compensate the victims of forced evictions so as to minimize adverse consequences. Further, guidelines on forced evictions should be based upon: the principle of non-discrimination, the need for participation, the need for taking decisions with the informed and free consent of the people concerned, the unlawfulness of force and coercion, access to Courts, the right to appeal, and the right to compensation and remedial action. In addition, any decision on forced evictions should include particular attention to vulnerable groups such as indigenous ethnic minorities.⁸⁴

84. In a 1997 policy statement, the United Nations High Commissioner for Human Rights (hereinafter “UNHCHR”) stated that “to be persistently threatened or actually victimized by the act of forced eviction from one’s home or land is surely one of the most supreme injustices any individual, family, household or community can face.⁸⁵” Accordingly, such action constitutes a gross violation of human rights. These acts cannot be justified by the simple use of such terms as “unavoidable” or “in the public interest.”⁸⁶

85. In 1998, the Special Representative of the United Nations Secretary-General on Internally Displaced Persons submitted a series of reports on internal displacement to the Commission on Human Rights.⁸⁷ These reports represent an exhaustive and authoritative overview of forced eviction and contain explicit principles with regard to these actions. One report entitled *Guiding Principles on Internal Displacement*⁸⁸ is particularly instructive on the issue of forced evictions and demolitions in East Jerusalem as it was drafted to address the specific needs of internally displaced persons worldwide. The *Guiding Principles on Internal Displacement* identify, “rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.” For example, Principle 5 provides that “(a)ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to the displacement of persons.” Principle 6 states that “every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.” Principle 7 is significant and merits full elaboration:

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

⁸⁴ *Ibid.* at para. 13.

⁸⁵ UNHCHR, Fact Sheet No. 25, *The Human Right to Adequate Housing* (1997).

⁸⁶ *Ibid.*

⁸⁷ See, e.g., see also U.N. Docs. E/CN.4/1998/53; E/CN.4/1998/53/Add.2.

⁸⁸ U.N. Doc. E/CN.4/1998/53/Add.2.

2. *The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.*

3. *If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:*

(a) *A specific decision shall be taken by a State authority empowered by law to order such measures;*

(b) *Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;*

(c) *The free and informed consent of those to be displaced shall be sought;*

(d) *The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;*

(e) *Law enforcement measures, where required, shall be carried out by competent legal authorities; and*

(f) *The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.*

86. In 1997, the United Nations Special Rapporteur on Population Transfer issued a report on freedom of movement and population transfers.⁸⁹ The report determined that population transfer is *prima facie* unlawful and violates a number of human rights. Specifically, population transfers violate international law when they meet one or more of the following criteria: they take place without due process, they are involuntary, they are carried out by force or threat of force, or they are discriminatory. According to the Special Rapporteur, population transfers can involve large numbers of people in a single event or they can be gradual, incremental, or phased. In addition, population transfers can occur for a variety of reasons including, *inter alia*, transfers purportedly for development or other public purposes.

87. In 1995, the United Nations Special Rapporteur on Housing issued a report on the universal right to adequate housing.⁹⁰ According to the Special Rapporteur, international law unequivocally recognises that forced evictions constitute a gross violation of human

⁸⁹ See *Human Rights and Population Transfer*, U.N. Doc. E/CN.4/Sub.2/1997/23 (1997).

⁹⁰ *The Right to Adequate Housing*, U.N. Doc. E/CN.4/Sub.2/1995/12 (1995).

rights.⁹¹ Accordingly, States parties should ensure that forced evictions do not occur and that any development projects that may lead to evictions should comport with the full panoply of human rights law.

88. The position taken by the United Nations and its affiliated agencies is unanimous; forced evictions that fail to respect basic international human rights standards are a fundamental violation of international law.⁹²

CONCLUSION

89. While States maintain certain police powers as an incident of sovereignty, such powers are not absolute. In the case of Israel's forced eviction of Palestinian residents from East Jerusalem, in the absence of due process protections and amid threats of and the use of violence, is contrary to fundamental principles of international law. Indeed, forced eviction is a particularly egregious violation as it implicates a variety of fundamental human rights including the right to liberty and security of the person, the right to be free from exile, the right to be free from arbitrary interference with one's privacy, family and home, the right to freedom of movement and residence, the right to human dignity and the right to an adequate standard of living, including housing.

90. In the final analysis, international law, regional instruments, international and regional jurisprudence and international customary law affirm the prohibition against forced eviction, a prohibition that can be traced to the universal expectation that States do not possess an unfettered power to violate basic human rights. It is not surprising, therefore, to find that laws protecting against forced evictions exist in virtually all States. Based upon this review of international law and practice, it is evident that the prohibition against forced eviction is a well-defined, universal, and obligatory standard that binds all States.

91. The COHRE and the ICJ declare under penalty of perjury that the foregoing is true and correct.

⁹¹ *Ibid.* at para. 166.

⁹² See also UNICEF, *The Needs of Internally Displaced Women and Children: Guiding Principles and Considerations* (1998); UNHCR, *International Legal Standards Applicable to the Protection of Internally Displaced Persons: A Reference Manual for UNHCR Staff* (1996); World Conference on Human Rights, Vienna Declaration and Programme of Action, U.N. Doc. A/CONF. 157/23 (1993); U.N. General Assembly Res. 43/181 (1988); Agenda 21. U.N. Doc. A/CONF.151/4 (1992).