

## 5. International law and forcible transfer in the occupied Palestinian territory

### Is Israel as the Occupying Power allowed to forcibly transfer Palestinians from the territory?

No. In the context of occupation, the Geneva Conventions could not be clearer in stating that the forcible transfer of individuals or communities of protected persons is prohibited, regardless of the motive.<sup>1</sup>

### Who are the protected persons in the oPt?

All civilians in the occupied Palestinian territory (oPt), who are not Israeli, are protected persons according to international humanitarian law. They are entitled to respect for their person, their honour, their family rights, religious convictions, and traditions. They shall be treated humanely and never be discriminated against.<sup>2</sup>

### Are settlers protected civilians?

IHL in situations of occupation does not consider nationals of the Occupying Power as “protected civilians” – they would instead be protected by human rights law. Settlers are considered “civilians” under IHL, and protected against direct attacks during hostilities, but not “protected civilians” in terms of the administration of occupation. In fact IHL prohibits the transfer of the Occupying Power’s population into occupied territory.

### What is meant by “forcible”?

According to international case law ‘forcible’ is not restricted to physical force, but may

include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons, or by taking advantage of a coercive environment.

### Can Israel evacuate Palestinians for their own safety?

Yes, during hostilities between warring parties civilians may be evacuated from a given area if the security of the population or imperative military reasons so demand. Civilians who have been evacuated shall be transferred back to their homes as soon as hostilities in the area have stopped.<sup>3</sup>

Persons directly affected by demolitions in 2012 <sup>4</sup>	4,102
Palestinian structures demolished in 2012 <sup>5</sup>	613
Palestinian structures demolished in the OPT since 1967 <sup>6</sup>	At least 28,000
Increase in number of structures demolished between 2009 and 2011 in Area C and East Jerusalem <sup>7</sup>	130 per cent

<sup>1</sup> Art 49, Fourth Geneva Conventions (1949).

<sup>2</sup> Article 27, Fourth Geneva Conventions (1949).

<sup>3</sup> Article 4, Fourth Geneva Convention (1949) and Article 47, Fourth Geneva Convention (1949).

<sup>4</sup> Protection of Civilians, UNOCHA, 27 May 2013.

<sup>5</sup> Humanitarian Monitor Monthly Report, UNOCHA, April 2013.

<sup>6</sup> Demolishing Homes, Demolishing Peace: Political and Normative Analysis of Israel’s Displacement Policy in the OPT, Israeli Committee Against House Demolition (ICAHN), April 2012.

<sup>7</sup> Occupied Palestinian Territory Consolidated Appeal, United Nations, 2013.

## Which general principles are relevant to this prohibition?

First and foremost an Occupying Power must administer the territory in a manner which benefits the local protected population and must, as much as possible, maintain the status quo. This represents the constitutional pillars of IHL during situations of occupation.

## Is forcible transfer a war crime?

Deportation or transfer of a protected person is a grave breach of IHL. All grave breaches amount to war crimes and could be prosecuted as such.<sup>8</sup>

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<sup>8</sup> Article 147, Fourth Geneva Convention (1949).