



## **The Civic Coalition for Defending Palestinian Rights in Jerusalem**

### **Israeli authorities seek to transfer or deport four elected members of the Palestinian Legislative Council from Jerusalem due to their political affiliation**

On 3 June 2010, Muhammad Abu-Teir, Ahmad Attoun, Muhammad Totah, and Khaled Abu Arafeh received notice from Israeli police that their permanent residency permits are being revoked and that they will be expelled from Jerusalem.

These actions represent an unprecedented and potentially far-reaching step by Israeli authorities who, since the occupation of East Jerusalem in 1967, have never invoked political affiliation as grounds for the removal of Jerusalem residency.

Mr. Abu-Teir, Mr. Attoun, and Mr. Totah are Palestinian Parliamentarians after having been elected to the Palestinian Legislative Council (PLC) on the Change and Reform party list in 2006. Additionally, Mr. Abu Arafeh served as the former Palestinian Minister for Jerusalem Affairs.

The current order appears to be the continuation of a 2006 decision by the Israeli Interior Minister who ordered the revocation of their permanent residency status on the basis that their election to the PLC, a 'foreign parliament', demonstrated their loyalty to the Palestinian Authority and not the State of Israel.

Mr. Abu-Teir received notification that he must leave Jerusalem by 19 June 2010 while the others have been given until 3 July 2010.

#### **Background**

The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo Agreements) called for the establishment of democratic elections to the Palestinian Legislative Council. Article II (3) states that, "Palestinians of Jerusalem who live there may participate in the election process in accordance with the provisions contained in this Article..." Article VI of Annex II addresses this issue in detail and provides for the "holding of direct, free and general political elections for the Council and the (President) of the Executive Authority in order that the Palestinian people in the West Bank, Jerusalem, and the Gaza Strip may democratically elect accountable representatives."

Under these provisions the aforementioned individuals secured election to the Change and Reform party list during the January 2006 elections. Following the results of the election in which the Change and Reform party list won 74 of the 132 available seats, the Interior Minister demanded that the four Jerusalem residents either denounce their membership on the party list or surrender their residency status.

In response, a motion for an injunction was filed to the Israeli Supreme Court as part of a

larger petition challenging the Ministerial decision (H.C. 7803/06, Khaled Abu Arafeh et al. v. Minister of Interior). The case is currently pending before the Court however all four of the named individuals have still received orders to leave Jerusalem.

While the Court's initial decision was pending the aforementioned individuals were arrested along with 61 other members of PLC who had recently been elected on the Change and Reform party list. These arrests came in response to the cross border raid that resulted in the capture of Israeli soldier Gilad Shalit. The arrested individuals were tried and sentenced to between two and four years due to their alleged membership in, and leadership of, a terrorist organization. In their case the Change and Reform Party was deemed tantamount to Hamas.

All of the individuals deny involvement with Hamas and insist that the Change and Reform Party and Hamas are not intrinsically linked. An Israeli Court accepted this general distinction in a related case pertaining to another member of the PLC who had also been arrested (Case N° PAL/43).

Khaled Abu Arafeh was released from prison in September 2008, while Muhammad Abu-Teir, Ahmad Attoun, and Muhammad Totah remained imprisoned until between May and June of this year. On 2 June Mr. Totah was the last to be released however unlike the other three, his Jerusalem residency documents were not returned to him. The following day police summoned the four individuals and informed them that their permanent residency was being revoked and they would be forced to leave Jerusalem in the coming weeks.

## **Legality**

Under international law the West Bank, including East Jerusalem, and the Gaza Strip are considered occupied territory and their Palestinian populations remain protected persons. It therefore follows that under Article 49(1) of the Fourth Geneva Convention, "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."

As such the pending transfers or deportations of Muhammad Abu-Teir, Ahmad Attoun, Muhammad Totah, and Khaled Abu Arafeh from Jerusalem represent a clear violation of Israel's commitments under international law.

Additionally, Israel's general commitments under the Oslo Accords are severely compromised. Oslo, Article III states that, "In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council..." Although Oslo highlights East Jerusalem as a final status issue and denies the PLC jurisdiction on these grounds, Israeli demands that the elected representatives who hold permanent residency in Jerusalem either denounce membership to a certain political party or surrender their residency stifles the spirit of the Accords. It represents clear violations of the basic international legal principles of the rights to self-determination, non-discrimination, liberty, residency, privacy and family life, expression, and association all of which Israel has defined commitments to under the International Covenant on Civil and Political Rights.

## **Broader Context**

The 2006 ultimatum offered by the Israeli Interior Minister leading to the recent revocation of Muhammad Abu-Teir, Ahmad Attoun, Muhammad Totah, and Khaled Abu Arafeh's permanent Jerusalem residency must be viewed in a broader context.

Any specific attempt to revoke residency from an individual based upon his or her political affiliation creates a dangerous precedent that may lead to the broad application of such residency restrictions. While this argument may appear to be an informal fallacy, recent residency restrictions demonstrate the mounting difficulties faced by East Jerusalemite Palestinians in maintaining their residence. Dual nationality, marriage to a foreign spouse, and residence outside of East Jerusalem for a prolonged period commonly results in the confiscation of Palestinians' permanent residency status in Jerusalem. Additionally the Interior Minister is granted a wide degree of discretion in the evaluation of such decisions.

At present the Ministerial Committee for Legislation in the Israeli Knesset has approved a bill that would permit the revocation of permanent residency status from East Jerusalemites with ties to espionage or designated terrorist organizations.

The ongoing events concerning Mr. Abu-Teir, Mr. Attoun, Mr. Totah, and Mr. Abu Arafeh provide a concerning example of the potential for an over expansive application of an alleged link to a designated terrorist organization. Their election to the Change and Reform party list has been interpreted as indistinguishable from terrorist activity despite their denials of involvement in Hamas and an Israeli Court's acceptance of the position that the two are not intrinsically linked.

Should the actions of any individuals be proven to violate criminal law, criminal law provides a sufficient and effective means of safeguarding the public from any evidentiary threat. However in the aforementioned cases, the four individuals have been accused of demonstrating disloyalty to the State of Israel due to their role as elected representatives in a 'foreign parliament'. The threat of deportation or transfer, prohibited under all conditions in international law, appears extreme and unprecedented in its application.

### ***In light of the above, the Civic Coalition calls upon:***

#### *The United Nations and the International Community:*

As High Contracting Parties to the Geneva Convention of 1949 to fulfill their obligations under Common Article 1, to respect and ensure respect for the provisions of the Conventions under all circumstances by taking appropriate measures to compel Israel to abide by its obligations under international humanitarian law.

To insist that Israel engage their legal obligations as an occupying power and rescind the revocation of permanent residency for Muhammad Abu-Teir, Ahmad Attoun, Muhammad Totah, and Khaled Abu Arafeh;

To ensure that Israel cease forthwith the transfer or deportation of any Palestinian from East Jerusalem as required by Article 49(1) of the Fourth Geneva Convention;

To pressure Israel to respect their undertaken commitments and the spirit of the *Interim Agreement on the West Bank and the Gaza Strip (Oslo II)* which require the establishment of democratic elections to the Palestinian Legislative Council.

*The European Union:*

For Member States to make effective use of the European Union Guidelines on promoting compliance with international humanitarian law (2005/C327/04) to ensure that Israel complies with the relevant standards of humanitarian law under paragraph 16(b), (c), and (d).