

Excerpts from ACRI Petition to the High Court:

Deployment of Private Security Guards by Housing Ministry to Guard Settlers in East Jerusalem is Unlawful

On 31 October 2011, the Association for Civil Rights in Israel (ACRI) and Palestinian residents of East Jerusalem petitioned the High Court of Justice demanding an end to the deployment of private security guards employed through the Ministry of Housing and Construction to protect Jewish residential compounds in East Jerusalem.

The full text of the petition in Hebrew can be found here [www.acri.org.il/he/wp-content/uploads/2011/10/hit8001.pdf].

Below are translated excerpts from the petition, presenting some of the key arguments, and supplementary clarification details. These do not constitute a complete summary of the principles presented in the petition.

Introduction

This petition concerns the illegal, unreasonable and discriminatory policy endangering human life in East Jerusalem that has continued unabated for some 20 years, a policy by which the Ministry of Housing and Construction operates private security personnel to guard Jewish residential compounds in Palestinian neighborhoods of Jerusalem.

The stated role of these security guards is to protect the Israeli settlers from the Palestinian residents of these neighborhoods, all of whom carry Israeli ID cards and are by and large considered permanent residents of Israel.

As of today some 350 security personnel are deployed to protect the approximately 2,000 settlers who live in dozens of compounds that dot East Jerusalem neighborhoods. A private security firm, Modi'in Ezrachi, is their direct employer, having repeatedly won the related Housing Ministry bid. Over the last twenty years, since this policy was put to practice, and in light of the increase in numbers of settlers and compounds, the security services budget for these areas has grown from 7 million NIS in 1991 to 76 million NIS in 2011 - an increase in real terms of 542 percent.

The guards perform various and sundry security and policing duties in close and intimate contact with the Palestinian population. The placement of these security personnel on the crowded streets of East Jerusalem has had a decidedly negative impact on how Palestinian residents conduct their daily lives. The armed guards endanger Palestinian life and limb, and they harm the normal exercise of residential daily life due to the improper and illegal discretion they wield.

The Israel Police have abdicated their role as the primary and exclusive authority charged with protecting all area residents. As such the police have effectively abandoned their

responsibility towards the Palestinian residents of East Jerusalem. This has had many implications for the lives of local residents.

In 2005, then Housing Minister, Isaac Herzog, convened a public committee under the direction of Maj. Gen. (res.) Ori Orr and charged it with the task of "examining the matter of the security of residential compounds and neighborhoods in the Old City and in East Jerusalem through the agency of the Ministry of Housing and Construction." Upon completion of its work, the committee made the unequivocal recommendation that responsibility for security of these areas should be returned to the Ministry of Internal Security and to the Israel Police. Yet shortly after the government voted on a resolution to implement the recommendation, it chose to revoke its previous decision and instead adopt the opposite resolution, thus preserving the status quo (Government Resolution 1073 from 21.1.2007). Though this form of resolution requires the government to present it to the Israeli parliament, such a step was never taken, leaving the resolution incomplete and the policy itself lacking a firm legal basis.

It appears that throughout – from the earliest security arrangements provided by private personnel, through the hearings held by the Ori Orr Committee, and culminating with the government resolutions on the matter – the rights and wellbeing of the Palestinian residents of East Jerusalem were neglected time and again. Never was there an attempt made to genuinely balance the rights of the Jewish settlers and those of the local Palestinians residing in the same neighborhoods, nor was the voice of the Palestinians ever heard. The Palestinian population was treated singularly and one-dimensionally as a security threat.

Initial Security Arrangements for Settlers in East Jerusalem

The Orr Committee Report on East Jerusalem describes how security operations began initially as a pointed solution to an individual problem: private security guards were stationed at the house that then Housing Minister, Ariel Sharon, had purchased in the Muslim Quarter of the Old City. And thus, without any semblance of debate or orderly government decision, facts on the ground determined that the Ministry of Housing and Construction would provide security for the minister's new home.

In 1991, the organization ELAD brought Jewish residents into the East Jerusalem neighborhood of Silwan to populate several properties whose ownership was in dispute. After the properties were evacuated by the Israeli police, ELAD submitted a petition to the High Court in which it declared that it would privately fund all security arrangements for the residents and would not seek any such support from the state, "not even one police officer" (HCJ 4747/91 ELAD v. Israel Police Commissioner, dated 10/23/1991). ELAD called upon the services of the security firm Modi'in Ezrachi, and to this day the same company provides all such security services in East Jerusalem. The State at the time, however, expressed its opposition to the protection of settlers by private security companies, as stated in the legal memorandum of then Attorney-General Yosef Harish:

"It is inconceivable that the petitioners will hire guards of their own accord, who will in effect supplant the Israel Police, and act to preserve law and order in their stead. The Israel Police and Israel's security forces are the sole bodies vested with legal authority to preserve public security and law and order, and no other bodies of any

type may assume their duties or their authority in their place. This is all the more so the case in an area as sensitive as the Shiloah neighborhoods (Silwan), where armed citizens who are not members of Israel's security establishment should be prevented from guarding the area, which would, of itself, constitute an aggravating element."

In the years that followed, several housing ministers proclaimed that the Israel Police and not the ministry ought to be the body invested with the protection of these areas. The current Housing Minister, Ariel Atias, too has referred the matter to the Prime Minister. In a letter dated April 2010, Atias writes that he believes the Israel Police is the sole body responsible for public security. He appends the letter of Yitzhak (Izzie) Lehrer, the Director of Security within the Housing Ministry in charge of the entire security operation in East Jerusalem, who warns of operational gaps between the police and security guards "which may result in the breakdown of the system and which could endanger human life in the immediate future." In a letter from June of the same year, Atias warns that "the handwriting is on the wall, and all I can do is read it to you, over and over... I presume that it is clear to you as well as to the other officials responsible for public security that under the current circumstances, it is impossible to believe that the Ministry of Housing and Construction – which is responsible for a number of different fields related to construction in Israel, development of new communities and older ones, providing housing relief to populations that cannot afford it, etc. – could run a security operation of this scope in an area that is so sensitive and potentially explosive."

Broad Authority, Insufficient Supervision

While all private security guards in Israel operate under the same specific law, it should be stressed that security guards in East Jerusalem are authorized with areas of responsibility that are far broader than those exercised by guards stationed at the entrances to malls and restaurants. First, East Jerusalem security guards are employed for the express purpose of protecting one national-ethnic group from another. Second, they regularly put to practice a broad range of powers, including the authority to use physical violence and fire live ammunition. Third, their authority is not limited to one specific gated compound (as Article 3 of the law concerning the protection of public security limits other guards), and they are required amongst other duties to accompany Jewish residents and their visitors through neighborhood streets and to ensure the safety of visitors coming both to and from the cemetery on the Mount of Olives.

Both professional aspects of the security guards' work and their instructions are supposed to be managed by the Israel Police, but because the guards are not part of the police force, supervision over them is extremely deficient. As such, it is unclear which body is authorized to handle complaints about improper security guard behavior, which body will examine these complaints, and according to what rules and norms the delinquent should be judged. East Jerusalem security personnel do not wear uniforms that differentiate them from entirely private security personnel operating in the neighborhood, and despite the clear obligation established by law, they do not wear identification tags with their names on them. Thus, the ability to prosecute a rogue security guard and bring him to justice is extremely limited. It is impossible to bring him before a disciplinary tribunal or write a letter to his personal file as is the norm with relation to police officers. Bringing an indictment against such a guard, as a private civilian, is only possible when there is adequate legal evidence against him.

Unlike police officers, who are subject to the laws and ordinances governing police behavior, private security guards in East Jerusalem do not labor under these laws nor do they share any commitment to the basic norms that guide the police in carrying out their role as a public body serving the entire public and not just one particular sector. Even when the police do arrive on the scene, East Jerusalem security personnel are not subject to their authority as subordinates. Whether or not a security guard decides to follow police orders in real time is a function of his own discretion.

As part of their work and the training they receive, East Jerusalem security guards take part in periodic exercises in the heart of the Palestinian neighborhoods where they are stationed. In recent years, these training exercises have generally taken place at night or in the early hours of the morning, with the guards scurrying between houses with drawn weapons, shouting loud commands of “Fire, fire, fire!” Local Palestinian residents, whose tense neighborhoods are often the scene of much security activity, have no way of knowing whether these are mere exercises or real events, and they refrain from walking around the neighborhood lest they be caught in the crossfire of violent confrontation.

Each exercise of this type naturally raises the level of tension and risk in the neighborhood, and exposes local residents, including children, to unnecessary violence and hostility. It should be stressed that holding regular security exercises in the heart of residential neighborhoods, without making the local population aware of the nature of these exercises, contradicts not only the dictates of plain logic (which demands reducing the violence level in these neighborhoods), but falls outside of the boundaries of this operation and it contravenes the limits of authority granted to the Ministry of Housing and the private security personnel employed by the Ministry.

Clashes between Security Guards and Palestinian Residents

Among the roles of the private security guards in East Jerusalem is to be a massive presence in crowded Palestinian neighborhoods, coming into daily contact with the local residents, and making wide use of martial means. Within the context of such activities, security personnel must often use their own discretion, including for the usage of physical force and live ammunition. Thus, the potential for human rights violations and the illegal misuse of force increases dramatically. The past two years have seen a significant escalation of clashes in Palestinian neighborhoods, with a marked increase of security guards utilizing violent means against local residents, including the use of fire with live ammunition. The petition includes a review of these violent incidents, including one in which Samer Sarhan of Silwan was shot to death in September 2010 and another in which Mazen Uda was seriously wounded when shot in the leg in June 2010.

Many Palestinian residents describe the fear and dread of the armed security personnel felt in the streets and upon their children. In addition, many Palestinians complain that security guards often limit their freedom of movement in order to protect the settlers. They stop local traffic to let settler cars pass through the narrow streets, they prevent the free passage of Palestinian residents on the streets when settlers are leaving their compounds, they prevent local children from playing in public areas close to settler compounds, etc.

Additionally, local residents complain that security guards routinely violate their privacy by positioning security cameras aimed directly into their private dwelling spaces.

Privatization of the Police Role

The Israel Police is the country's primary body charged with preventing crime, maintaining public order, and ensuring the security of life and property in accordance with Israeli law. Article 5 of the Police Ordinance details the duties of police officers, and among these are maintaining order in public spaces, preventing disturbances during lawful assemblies, upholding traffic laws, etc. Any transfer of police powers to another body – especially one that is not committed to the protection of all residents and which is not oriented towards maintaining the “delicate balance” necessary for ensuring the human rights of the entire public, even when these rights conflict with one another – runs counter to the understanding of the special role that the police play in a democratic state.

Because these are security issues with potentially far-reaching implications for the human rights of local residents, there should have been increased public scrutiny of the guards' work, providing an additional means of public oversight to those already in place. Whenever privatization increases the potential for violating human rights and endangering human life, an increased level of oversight must be demanded and more sophisticated and effective supervision mechanisms put in place, by as many regulatory bodies as needed. Unfortunately, regarding the current security arrangement in East Jerusalem, this is not the case.

As stated in Article 7 of the 1948 Universal Declaration of Human Rights, "All are equal before the law and are entitled without any discrimination to equal protection of the law". The decision to operate private security guards, funded by the state, in order to protect one segment of the population, Jewish, from the other segment of the population, Palestinian, clearly violates this principle.

Photos

Credit: The Association for Civil Rights in Israel

http://www.acri.org.il/ar/wp-content/uploads/2011/10/EJ_SettlerSecurity_Post.jpg
http://www.acri.org.il/ar/wp-content/uploads/2011/10/EJ_SettlerGuards_Guns.jpg
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