

House Demolitions in the occupied Palestinian territory

The protection of private property under international humanitarian law

LEGAL BRIEF

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Introduction

Israel has implemented, and continues to pursue, the policy of demolishing structures owned and inhabited by Palestinians in the occupied Palestinian territory (oPt), in violation of international law. Demolitions include residence and livelihood-related structures, with estimates indicating that at least 28,000 Palestinian structures have been demolished in the OPT since 1967.¹

In 2013, the Israeli demolition of Palestinian-owned structures and the number of Palestinians displaced by these demolitions reached a five-year high. Six hundred and sixty three Palestinian structures were demolished in Area C and East Jerusalem, forcibly displacing 1,103 Palestinians, including 545 children.²

¹ Demolishing Homes, Demolishing Peace: Political and Normative Analysis of Israel's Displacement Policy in the OPT, Israeli Committee Against House Demolition (ICAHAD), April 2012.

² OCHA, Protection of Civilians Weekly Report, 7-13 January 2014. Available at:
<http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_01_16_english.pdf>

Between 2009 and 2013, there was a 141 per cent increase in the number of structures demolished and a 72 per cent increase in the number of people displaced in Area C of the West Bank and East Jerusalem.³

Israel has employed three ‘justifications’ for pursuing the policy and practice of property destruction: punitive, administrative, and during the course of military operations. The increasing number of administrative demolitions in the West Bank, including East Jerusalem, is of particular concern.

The International Court of Justice (Advisory Opinion on the Wall of 2004), the UN Security Council (UNSC Res. 242), and the International Committee of the Red Cross (ICRC), amongst others, have confirmed that Israel is the Occupying Power in the West Bank, including East Jerusalem, and the Gaza Strip. As such, Israel is bound by the relevant rules of international humanitarian law (IHL). Israel is also bound by international human rights law in the oPt. In situations of occupation, property belonging to protected persons – public buildings or private houses – is primarily protected by IHL, which strictly limits if, and in what circumstances, demolitions can take place.

Administrative Demolitions

The Israeli authorities carry out administrative demolitions when structures do not have building permits. These take place predominantly in Area C and in illegally annexed East Jerusalem, which are under exclusive Israeli planning authority. Administrative demolitions account

for approximately 23 per cent of all demolitions between 1967 and 2012.

Significantly, in the vast majority of cases, Palestinians have no choice but to build without a building permit, as permits are almost impossible to obtain. Israeli officials attempt to justify this type of demolition by claiming that Palestinians are violating the relevant zoning and planning laws and that the demolitions are a means of law enforcement.

However, Article 53 of the Fourth Geneva Convention outlines the protection of property under IHL:

Any 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 organisations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

(Emphasis added)

Clearly, the protection of property strictly regulates the very limited circumstances in which the Occupying Power may destroy property. According to IHL, the destruction of said objects is permissible only when rendered absolutely necessary by military operations, that is to say, movements, manoeuvres and other actions taken by the armed forces with a view to engaging with organised armed groups. **Lack of building permit does not**

³ Occupied Palestinian Territory Consolidated Appeal, United Nations, 2013. See also, OCHA, Protection of Civilians Weekly Report, 7-13 January 2014.

qualify as a justification for demolitions in this regard.

Furthermore, extensive destruction carried out unlawfully and wantonly would amount to a grave breach under Article 147 of the Fourth Geneva Convention.

Administrative demolitions: An exception to the exception?

It is sometimes suggested that administrative demolitions are in conformity with international law due to the Occupying Power's obligation to ensure law, order and civil life under Article 43 of the Hague Regulations. This position suggests that the enforcement of illegal planning would fall under the remit of Article 43. However, the argument is not well founded for several reasons:

- There is no "administrative" exception under Article 53, which specifically regulates occupation.
- Private property is also specifically protected under Article 46 of the Hague Regulations.
- According to the doctrine of legal interpretations, *lex specialis derogat legi generali*, meaning that specialised laws (Article 53 GCIV and Article 46 Hague Regulations) take precedent over general laws (Article 43 Hague Regulations).

It is important to remember that the power granted by Article 43 of the Hague Regulations comes with limitations:

- It is based on the duty to ensure the welfare of the local population.

- Any legislation or step taken under this provision *must* be in accordance with measures specifically outlined by IHL. Article 43 cannot be used to justify measures specifically prohibited by IHL (for instance collective punishment, forced transfer or house demolitions). Any local legislation that would allow such measures must be amended so that it is in line with the principles of IHL.
- It is important to remember that the actions of an Occupying Power cannot, as a matter of international law, be equated with a situation that does not involve occupation, i.e. the activities of the Swedish local government in enforcing its local planning laws. An Occupying Power is not granted the same level of authority to interfere with the lives of the local population. Such limitations on Israel further support the notion that full planning authority in the West Bank should be transferred into Palestinian hands.
- In the rare case where the wellbeing of an individual or family is directly threatened by an unstable building, for example, demolition would only be a legitimate option after all other possible alternatives were exhausted and would have to go hand in hand with *construction* in the same location.
- Any measure would have to be developed by a planning regime that is in conformity with international law.
- Israel's policy and practice of demolitions and forced eviction in the oPt violate the right to adequate housing enshrined in several bodies of international human rights law.

Planning Regime and International Law

The Israeli planning regime in Area C of the West Bank came about as a result of interference (Military Order 418) in local laws and legislation beyond what is allowed for under international law. Given that it does not respect the local laws, manners and customs of the protected population, the planning regime is unlawful in its design. Additionally, the planning process fails to ensure the basic needs and public order, safety and civil life of the Palestinian population, particularly in Area C.

Instead, the Israeli planning system undermines Palestinians rights and safeguards under both IHL and international human rights law. Moreover, it facilitates unlawful acts, such as destruction of property and forcible population transfer, appropriation of land, establishment of settlements and their associated regime, and economic exploitation of occupied territory, including wide-spread pillage of natural resources, as well as the further entrenchment of the Wall and the annexation of East Jerusalem.

Furthermore, the permit and planning process is unreasonably lengthy, highly ineffective, discriminatory and detrimental to the protected Palestinian population. Additionally, the planning regime disenfranchises Palestinian ownership of appropriate planning institutes, denies the effective administration of justice and prevents the realisation by the Palestinian people of their right to self-determination.

Finally, the planning regime systematically impedes the delivery of humanitarian and development aid to Area C.

The overall consequence is a **restrictive, discriminatory and unlawful planning regime that obstructs Palestinian development in Area C**, and that prevents the maintenance of order and safety.

Connection to Other Illegal Policies

It is important to note the connection between administrative demolitions and settlement expansion. According to UN OCHA, 60 per cent of all demolitions take place in the vicinity of settlements. United Nations Special Rapporteur on the Occupied Palestinian Territory, Prof. Richard Falk stated that the:

“information [...] inevitably leads to the conclusion that Israel is implementing a deliberate policy of forcing Palestinians out of their homes and off their land, in order to establish more illegal settlements and to proceed with the de facto annexation of the West Bank, if not altogether, at least in relation to its substantial part.”