

4. Destruction of houses and property during occupation

Are houses and private property under occupation protected by International Law?

Yes, International Humanitarian Law protects private property under occupation. This rule is part of customary international law, binding on all states.¹

“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State... is prohibited, except where such destruction is rendered absolutely necessary by military operations.”²

Is the destruction of houses allowed for administrative reasons?

Destruction by the occupier is only allowed where it is absolutely necessary for the Occupying Power in military operations to gain a concrete and direct military advantage. Any “administrative” destruction could only be considered if it was the benefit of the local population, coupled with construction in the same location and taking place within a lawful planning regime.

Why do Palestinians build without building permits?

Many Palestinian structures in the occupied Palestinian territory (the oPt) are demolished due to lack of a building permit, predominantly in Area C and in East Jerusalem, which are under exclusive Israeli planning authority. The Israeli planning system makes it almost impossible to obtain building permits, including for minor construction, livelihood structures and

the maintenance of existing structures. More than 90 per cent of Palestinian applications for building permits in Area C have been rejected in recent years.³

Thirteen per cent of East Jerusalem and one per cent of Area C have been allocated for Palestinian development, with much of this area already heavily built up. The permit and planning process is unreasonably lengthy, ineffective, discriminatory and expensive for those applying.

Is the planning system legal?

Under international law, the Israeli planning regime is unlawful in design as it does not respect the local laws and customs of the protected population. Also, the planning process fails to ensure the basic needs and public order, safety and civil life of the

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| Persons directly affected by demolitions in 2012 ⁴ | 4,102 |
| Palestinian structures demolished in 2012 ⁵ | 622 |
| Palestinian structures demolished since 1967 ⁶ | At least 28,000 |
| % increase in the number of structures demolished between 2009 and 2011 in Area C and East Jerusalem ⁷ | 130 |
| % of demolitions that were of punitive nature 1967–2012 ⁸ | 6 |

¹ International Committee of the Red Cross (ICRC) Customary IHL Database, Rule 50.

² Article 53, Fourth Geneva Convention (1949).

³ Restricting Space, UNOCHA, December 2009.

⁴ Protection of Civilians, UNOCHA, 27 May 2013.

⁵ Protection of Civilians, UNOCHA, 1 October 2013.

⁶ Demolishing Homes, Demolishing Peace, Israeli Committee Against House Demolition, April 2012.

⁷ Occupied Palestinian Territory Consolidated Appeal, United Nations, 2013.

⁸ Demolishing Homes, Demolishing Peace, Israeli Committee Against House Demolition, April 2012.

Palestinian population, particularly in Area C. Instead, the Israeli planning system undermines Palestinians rights under both IHL and IHRL. The planning system facilitates unlawful acts, including destruction of property and forcible transfer. It also enables the further entrenchment of the Wall and the annexation of East Jerusalem. Moreover, the planning regime prevents Palestinians representation in or ownership of the planning process and denies the right of the Palestinian people to self-determination.

Are punitive demolitions legal?

IHL prohibits collective punishment, i.e. the punishment of protected persons for acts that they are not personally responsible for, simply because of their connection with the person held responsible.⁹ Punitive demolition of houses is prohibited as they target and harm the family on account of their association with the suspected person.

Are demolitions during hostilities between warring parties permissible?

During times of armed conflict, only direct attacks against lawful military objectives are permitted. Any attack against a civilian object is unlawful (the definition of a military object can include what you might normally think of as a civilian). Property may only be directly targeted if the property makes an effective contribution to the action of the enemy and if there is to be a military advantage in attacking it. If any such direct attack would cause incidental or secondary civilian harm, it must be proportionate to the military advantage to be gained.

Property could also be destroyed or damaged during an attack against another lawful object, for example a military base, and would be considered collateral damage. If the military base was located next to civilian houses, any damage to civilian property would have to be proportionate to the military advantage gained by destroying the military objective.

Do the demolitions violate human rights law as well?

Yes, Israel's practice of demolitions in the oPt violates the right to adequate housing enshrined in international human rights law (IHRL). Key documents containing the right

to adequate housing are the 1948 Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The right to adequate housing is an essential component of the right to a decent standard of living and an important foundation for the realisation of other rights, including the rights to family, work, and education. [See IHL Fact Sheet 7 on IHRL].

Is the destruction of houses a war crime?

In situations of occupation, extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, is a grave breach of the Fourth Geneva Convention.¹⁰ Direct attacks against civilian objects are prohibited and also amount to grave breaches. All grave breaches amount to war crimes and could be prosecuted as such.

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⁹ Article 33, Fourth Geneva Convention (1949).

¹⁰ Article 147, Fourth Geneva Convention (1949).