



Position Paper

The Housing Demolition Policy in Occupied
Jerusalem is a War Crime and a Crime of
Persecution Against Humanity

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Introduction:

In 1948, the Israeli occupying forces displaced around 750,000 Palestinians, and vehemently destroyed Palestinian farms and villages within the 1948 borders in an attempt to eliminate any proof of Arab ownership and cultural background. It methodically seized Palestinian houses and properties; and repopulated them with Israelis, and established the state of Israel on illegally confiscated land.

This was only the beginning of an ongoing demolition policy that the Israeli Governments has been illegally implementing in the occupied territories; especially within the city of Jerusalem; ruthlessly demolishing 350 houses and buildings in Jerusalem during 2003-2004 alone. The Israeli government is an occupying force that applies its sovereignty on confiscated land, openly violating UN resolutions and laws. It comes as no surprise that its demolition policy is again in blatant opposition to the provisions of international and humanitarian law and the criteria set forth in the human rights conventions and charters; since the destruction is not justified by military necessity and clearly violates the right of Palestinians to adequate housing and property ownership. The Government continuously justifies its demolition policy in Jerusalem by either stating that Palestinian homeowners do not have building permits, or citing security issues. Whereas in the majority of cases where houses were demolished due to alleged "security offences," it was proven that the owners of these houses were not involved in any of these "offences."

This discriminatory policy is also systematically applied and carried out with the endorsement and support of the Israeli Supreme Court, which has repeatedly justified these demolitions and unfailingly provided legal bases for them.

We believe that this policy should be condemned as a discriminatory policy for collective punishment in light of the anguish it causes: affecting families, owners and residents, and causing them unjustifiable suffering, as well as blatantly violating their basic human rights.

The planning policy and house demolition in Jerusalem are in violation of the Palestinians' right to housing:

The planning policy that Israel adopts in Jerusalem aims at Judaizing the city by targeting its Palestinian inhabitants, imposing building restrictions that eventually forces them to migrate elsewhere, these restrictions are often based on maps that dates back to 50 years that they drew up themselves to inhibit Palestinians from building new structures, with the aim of limiting the growth of construction of Palestinian homes on the one hand, while inversely encouraging its own settlement activities on confiscated Palestinian lands in order to strengthen Israeli existence on the other hand. It also actively isolates the city and makes it impossible for other Palestinians to settle in it. Another dangerous aspect of its policy is its systematic encircling of Palestinian neighborhoods using settlement projects, cutting off communication between these neighborhoods and preventing their expansion and development, actively blurring the green line and choking Palestinians in their own city. An example is the detachment of Palestinian neighborhoods such as Wadi El-Joz, Shoa'fat, Al-shekh Jarrah and Asawayah from each other by the encroachment of the Israeli neighborhoods in the French hill. As well as the Jev'at Hamtoos settlement and Har Houmah that separate the towns of Beit Safafa and Sour Baher.

This planning policy is discriminatory and unjust, because of its dire effects on the Palestinians living in Jerusalem. It robs them of their right to appropriate and decent housing, excludes them from planning schemes that should provide them with healthy living environments and much needed public facilities most of them are basic. All in plain contrast with Israeli neighborhoods that enjoy all of these as well as carelessly expanding on illegally confiscated Palestinian properties.

The 1965 Planning and Building Law: Issuance of Building Permits:

The planning and buildings law is used as a tool to impose control over Arab properties and appropriate them for "the benefit of the public", as well as increasing the number of constraints for Arabs who want to apply for building permits. Israeli law governs both East and West Jerusalem, and Arabs living in Jerusalem need to get building permits that are consistent with the 1965 Planning and Building Law. This gives the regulatory and planning authorities and their related committees the power to discriminate against Palestinians, enabling them to restrict the issuance of building permits to them, to further limit Palestinian urban and natural population growth. They also facilitate planning and building procedures to improve settlement projects that, again, marginalize Palestinians.

This law is illegal, violates international law and aims to eradicate any reference to the pre-occupation state of the city. It is also prejudiced and discriminatory against the Arab inhabitants of the city, since it does not differentiate in treatment between citizens and permanent residents. The difficulty of obtaining permits also means that Arab inhabitants are forced to leave Jerusalem and migrate to suburbs and surrounding villages.

The planning and building law also states that many of the areas in East Jerusalem and the surrounding land are green areas, and cannot be used for construction.

Data shows that 40% of the lands on East Jerusalem are considered as green areas, effectively banning Palestinians from building in these areas. However, the real purpose is to strategically reserve these lands for settlements expansion, since settlements like Har Homah (Abu Gneem Mountain) and Rekhes Shoa'fat (Al-Rass zone in Sho'fat village) are built on these lands. The mentioned law specified the ratio for allowed buildings for Palestinians is 75% and for Israelis 300%.

Restrictions on construction and demolition of houses under the pretext of the lack of buildings permits

The Israeli laws that are applied in Jerusalem, as well as the strict restrictions and measures adopted by the Jerusalem Municipality to prevent the access of Palestinians to building permits makes obtaining them almost impossible; forcing Palestinian to build without permits in order to meet their housing needs, and to live under very crowded conditions in their households. The occupation authorities refused to ratify the requests for building permits on the pretext of the absence of evidence of the applicant's ownership of the land they intend to build on. To prove their ownership, Palestinians have to go through complex, and expensive procedures, and in most cases, the license application is rejected on the grounds that the land necessary for the benefit of the public, vital projects, or is classified as a green area. These dismal circumstances forced tens of thousands of Palestinians to leave the city and move to the suburbs, or even emigrate elsewhere. As well as subject houses that are built without permits to demolition.

The Israeli authorities escalated its demolition activities during Al-Aqsa Intifada throughout the whole occupied territories including Jerusalem. It demolished houses in Jerusalem under the pretext of the absence of a license (mostly because the victims were unable to obtain a license in the first place), or for alleged security issues.

It is clear that the true objective of the demolition policy is to empty the city of its original inhabitants and lessen the percentage of Palestinians within the city limits under the authority of the Israeli municipality to no more than 12%, thus maintaining the current demographic situation, that is to say: maintain the Jewish majority. This violates international standards of human rights including the right to adequate housing, the right to property ownership, the right to choose place of residence, and the right to survival and to meet natural growth needs, development and progress.

These policies have forced tens of thousands of Palestinians living in Jerusalem to leave the city and move to the suburbs, or to emigrate elsewhere. Besides the fact that Israel, as an occupying power, has not fulfilled its obligations under the provisions of International Humanitarian Law, specifically the Fourth Geneva Convention, of meeting the daily needs of the population of the occupied territories, and ensuring their security, safety, and welfare. It instead applies policies that impose difficult living conditions on Jerusalemites, contributes to the deterioration of their conditions, and the worsening of the crises and the problems they face. Including the many difficulties that prevent the

Palestinians from obtaining building permits, leading to continued demolitions contrasted with the deployment and expansion of settlements throughout the occupied territories, specifically Jerusalem, where it has established more than 170 settlements, which has settled at least 420,000 Jewish settlers who originate from other parts of Israel or from other countries.

Demolition of houses is a serious violation to the provision of the 4th Genève convention of 1949:

The policy of demolitions is illegal, and opposes the provisions of international and humanitarian law; specifically those set forth in the Genève Convention on the Protection of Civilians in Time of War in 1949 (Genève 4th agreement). According to Genève's 4th agreement, the demolition of houses is a grave offence, and is a method of oppression that causes the destruction and confiscation of property at a large scale when there is no military need to do so. In addition to being in violation of the right of individuals to be tried in courts of law before independent and impartial tribunals that meet the requirements of a fair trial, giving the accused the opportunity submit evidence, call witnesses, and to defend themselves.

And in light of the grave breach of the Fourth Geneva convention by the demolition policy, it is imperative that the Signatories should fulfill their obligation to uphold the agreement by taking the necessary legislative measures and providing effective penal sanctions against those who commit these breaches, regardless of nationality. In accordance with the provisions of Article 146 of the Fourth Geneva Convention, the demolition of houses is a war crime, which requires the agreeing states to put anyone who planned, implemented, participated in or ordered these actions to be done to trial. It is their responsibility to prosecute and try them as war criminals.

Demolition of houses as a war crime

Under the provisions of international criminal law, the demolition of houses on a large scale considered as illegal act, and is against to international law, Article 8 (2) (IV) of the Statute of the International Criminal Court that the extensive destruction and appropriation of property without the justification of military necessity and in violation of the law is considered a war crime.

The demolition policy contains all the elements required for it to be classified as a war crime, according to the court system set by the International Criminal Tribunal, and these are:

- *That the perpetrator of the crime destroyed or seized specific property.
- *That this seizure is in no way justified by military necessity.
- *That the destruction or appropriation was extensive and carried out wantonly.
- * That the effected property falls under the protection from destruction or seizure under one or more of the Geneva Conventions of 1949.
- *The perpetrator crime was aware of factual circumstances that established that protected status.

*The conduct took place in the context and associated of international armed conflict and was associated with it.

*The perpetrator crime was aware of factual circumstances that established the existence of an armed conflict.

The Demolition is a War Crime and Persecution Crime Against Humanity

The demolition policy of the Israeli occupation forces is a crime against humanity, because it persecutes the Palestinian civilian population without military necessity. And the Statute of the International Criminal Court identifies a crime of persecution against any identifiable group on political, racial or national or ethnic, cultural or religious basis using these points:

*When the perpetrator severely deprives one or more individuals of their fundamental rights, and contrary to international law.

*The perpetrator targets such person or persons because they belong to a specific group or denomination.

*And that this targeting was based on political, racial, national, ethnic, cultural or religious groupings as defined in paragraph 3 of Article 7 of the Statute or any other grounds that are universally recognized as impermissible under international law.

*The conduct was committed in connection with any act referred to in paragraph 1 of Article 7 of the Statute or any crime within the jurisdiction of the Court.

*The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

*That the accused knew that the conduct was part of a widespread or systematic attack directed against a civilian population or intended the conduct to be part of that attack.

Accordingly, it is clear that the policy of punitive house demolitions by the occupying forces that systematically target the Palestinian population includes all elements of the crime of persecution as a crime against humanity. And the Israeli authorities have deprived tens of thousands of Palestinians of their fundamental right by committing these crimes.

Recommendations

The international community

*The General Assembly of the United Nations should work under resolution 377, "Uniting for Peace" of 1950, and issue specific recommendations to Member States to take collective action to end Israel's occupation of Palestinian land, and until then, ensure the protection of Palestinians in the occupied territories against Israeli policies, including the demolition of houses. To make up for the Security Council's failure to fulfill its role of protection of international peace and security by ending the Israeli occupation of Palestinian land.

The General Assembly of the United Nations needs to form a fact-finding committee to investigate the policies pursued by the Israeli authorities towards the city of Jerusalem and its Palestinian citizens that are geared towards erasing the city's remaining facets of identity from the pre-occupation period.

That the Signatories of 4th Genève agreement on the Protection of Civilians in Time of War of 1949, compel Israel, the occupying power, to fulfill their obligations under the agreement, And stop the policy of demolition and destruction of homes and property belonging to Palestinians, including occupied East Jerusalem, as well as compensate Palestinians for material and moral damage caused to them by these acts.

That the Signatories of 4th Genève agreement fulfill their obligations to take legislative actions and means of widening its jurisdiction and provide effective penal sanctions to persons accused of demolishing homes, planning and ordering, and prosecuting them accordingly.

Israeli occupation authorities

To respect and adhere to the rules and provisions of the 4th Genève agreement, and stop the policy of demolishing Palestinian homes in occupied Jerusalem, as a form of collective punishment, and allow the Palestinians to exercise their fundamental right to construction and development and progress, as well as the cancellation of all policies, laws and procedures for the demolition of houses, including the Defense Regulations (Emergency) Act 1945.

To pursue a planning policy based on respect for international conventions on human rights and the provisions of the 4th Genève agreement to ensure the Palestinians' right to adequate housing. As well as develop municipal schemes to meet the residential needs of Palestinians, to modify existing schemes in order to give them building permits, and allow them to build houses according to their needs.

To rebuild demolished Palestinian homes, returning them to their former state, or otherwise providing moral and material compensation for the losses caused to them and their families by this tyrannical policy that is based on racial discrimination, and aimed at displacing Palestinians in Jerusalem.

And that Israel, as the occupying power, apply the rules and provisions of international humanitarian law and international standards of human rights on the population of the occupied Palestinian territories, to develop and have mechanisms in place that would provide protection for them, and ensure that they can exercise their fundamental rights of security, safety, and well-being.

Palestinian Authority

To Monitor and document the demolitions in the Occupied Palestinian Territory, including Jerusalem, and the cases of forced displacement resulting of these, and the evaluation of material and moral damage caused by them.

To provide the necessary assistance to the victims of the policy of demolishing homes in order to support the steadfastness of the Palestinians and their existence in Jerusalem, and support the integrity and unity of the Palestinian family.

Non-governmental organizations and local communities

Should demand that Israel, the occupying Power, ends its occupation of Palestinian land, and until then, take into account the application of the 4th Genève agreement to the occupied territory, and respect the criteria set 4th Genève agreement and international human rights and the provisions and rules of international humanitarian law, which provides protection for the Palestinians in the occupied territories, including Jerusalem.

Demand that Israel, the occupying Power, immediately halts its the policy of house demolitions in the Occupied Palestinian Territory, and to restore the situation to what it was before the demolition, and if not, compensate the victims for the moral and material damage caused to them.

To urge the international community, the United Nations, the States Parties to the 4th Genève agreement and its legal obligation to withhold support for the policies pursued by Israel in the Occupied Territories, and its policy of demolishing houses, and pressure it to stop, such as the fulfillment of its obligations under international agreements and conventions on Human Rights the 4th Genève agreement.

To control and monitor the internal forced displacement in the Occupied Palestinian Territory, including Jerusalem, resulting from the policy of demolishing houses, and conduct studies and research about them, and introduce and develop specific projects for the protection and assistance of victims.

Develop and introduce pressure and advocacy campaigns, aimed at the international community to in turn pressure Israel to stop its violations of human rights in the Occupied Palestinian Territory, including the demolition of houses, and demand that Israel be sanctioned and denied foreign investment.

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