

AMNESTY INTERNATIONAL PUBLIC STATEMENT



Index: MDE 15/1430/2015

10 April 2015

Israeli authorities must transfer planning powers to Palestinians in Area C of the occupied West Bank

As the Israeli High Court of Justice is due to consider again a petition on the planning rights and institutions of Palestinian communities in Area C of the occupied West Bank, Amnesty International urges the Israeli authorities to seize the opportunity presented by this case to transfer planning powers to the local Palestinian communities.

In Area C of the occupied West Bank, where planning and zoning, as well as all other aspects of life, have remained under full Israeli control since June 1967, the Israeli authorities have denied Palestinians meaningful participation in planning processes for decades, and made it almost impossible for Palestinians to obtain permits to build legally. Israel's Civil Administration, a military body, has enforced sanctions against construction without permits in the occupied West Bank in a discriminatory manner, demolishing thousands of Palestinian homes and other structures, while only enforcing demolition orders against a fraction of the structures without permits in Israeli settlements, all of which were built in violation of international law. Limited planning initiatives in certain Palestinian communities by the Civil Administration over the years have resulted in confining Palestinian development to existing built-up areas in these communities.

As the occupying power, Israel is prohibited, by Article 53 of the Fourth Geneva Convention, from destroying the property of Palestinians in the West Bank unless it is militarily necessary to do so. Israeli demolitions of unlicensed Palestinian homes cannot be justified by military necessity, which requires urgency, since the process of issuing, appealing, and implementing stop-work and demolition orders can take years. The extensive destruction or appropriation of property not justified by military necessity and carried out unlawfully and wantonly is a grave breach of the Fourth Geneva Convention, and a war crime under Article 8(2)(a)(iv) of the Rome Statute of the International Criminal Court.

Meanwhile, the Civil Administration and the "Special Local Planning Committees", established under Military Order 418 of 1971, have facilitated the planning, construction, and expansion of illegal Israeli settlements, and the mass, systematic and ongoing violations of Palestinians' human rights that settlements cause. Israel's policy of settling its civilians in the Occupied Palestinian Territories (OPT), as well as the forced transfer of Palestinians within the OPT when committed as part of a plan or policy, are war crimes under Article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court.

Military Order 418, which abolished the local and district planning committees in the occupied West Bank established under Jordanian Planning Law Number 79 of 1966, effectively precluded any meaningful Palestinian participation in Israeli-controlled planning processes. This formal denial of participation in planning for an entire population, coupled with the establishment of a parallel planning system for Israeli settlements that explicitly discriminates in favour of another population whose very presence living in the territory in question violates international law, is unique globally, to Amnesty International's knowledge, and fails to conform to widely accepted and practiced planning standards. For Palestinians in the OPT, it has led to decades of human rights violations, including house demolitions, forced evictions, and confiscation and seizure of land, and severely harmed their rights to adequate housing, water, health, family life, work, and education.

Amnesty International, which has been working on forced evictions and the right to adequate housing globally for over a decade, considers that the standard planning model around the world is to devolve powers, within a framework set by national government, to local authorities. The participation of local communities in planning processes and decisions is essential, both in order to respect the human rights of individuals in these communities, and for governmental authorities to fulfil their obligation to conduct genuine consultations and avoid forced evictions, which are prohibited under international law. This is reinforced by the recent report issued by the UN Special Rapporteur on the right to adequate housing on the role of local and sub-national governments in the realization of the right to adequate housing, presented to the Human Rights Council in 2015. Planning initiatives by certain Palestinian communities in Area C and their advocates have not reduced widespread demolitions and other Israeli violations of the right to adequate housing in Area C as a whole. In any case, these initiatives do not relieve the occupying power of its responsibility to transfer planning powers back to that population according to the original domestic legislation; they cannot serve as an excuse to continue holding planning powers unlawfully.

Transferring planning powers to Palestinian communities in Area C, by reinstating the local and district planning committees abolished by Military Order 418, as requested by the petitioners in *HCI 5667/11, al-Dirat al-Rifa'iyya Village Council et al v. Minister of Defense et al*, would not in itself remedy decades of violations against Palestinians in the occupied West Bank by the Israeli authorities. However, the action is long overdue, and would enable the development of plans through genuine consultations with the affected communities, as required by international law – an obligation the Israeli authorities have failed to uphold since Israel occupied the West Bank in 1967. The latest internal procedure issued by the Head of the Civil Administration in September 2014, which essentially solicits input from the relevant villages prior to the deposition of spatial plans for public objections, does not conform with Israel's international obligations and cannot substitute for the full transfer of planning powers to the local Palestinian population.

Amnesty International has urged the Israeli authorities to transfer responsibility for planning and building policies and regulations in the OPT to the local Palestinian communities for many years.¹

¹ See, for example: Amnesty International, *Demolition and dispossession: The destruction of Palestinian homes*

Articles 7 and 47 of the Fourth Geneva Convention stipulate that “protected persons” – in this case Palestinians living under Israeli occupation – “shall not be deprived... in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power”. The 1995 Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip in fact stipulated that planning and zoning powers in Area C would be “transferred gradually to Palestinian jurisdiction” in a process that was supposed to be completed within 18 months of the establishment of the Palestinian Legislative Council.² The facts that this agreement allowed Israel to retain planning and zoning powers in Area C temporarily, and that many of its provisions have not been implemented to date, do not negate Israel’s continuing obligations as the occupying power under international law. Nor did the 1995 Interim Agreement or any subsequent agreements confer legality to unlawful Israeli policies and practices in the OPT. In particular, Israel’s obligations under Article 43 of the Hague Regulations to respect “unless absolutely prevented, the laws in force in the country” prior to the occupation, and to ensure public order and life, were not altered by the 1995 Interim Agreement.

HCJ 5667/11 represents an opportunity for the Israeli authorities to take an important step towards fulfilling their obligations to ensure respect for international law by cancelling the changes to the Jordanian Planning Law of 1966 which were not justified under Article 43 of the Hague Regulations. The Israeli authorities should do so without further delay, and before further demolitions exacerbate the decades of unlawful destruction and appropriation of Palestinian property. Military Order 418 may have escaped notice when it was issued on 23 March 1971, but in 2015, the world is watching.

Background

After decades of legal cases, advocacy, and campaigning against Israeli demolitions of unlicensed Palestinian homes, four human rights NGOs (Rabbis for Human Rights, the Jerusalem Legal Aid and Human Rights Center, the Israeli Committee Against House Demolitions, and the Society of St. Yves - Catholic Center for Human Rights) submitted the petition, together with the village council of al-Dirat al-Rifa'iyya, on 31 July 2011. The petition calls for the Israeli military commander in the West Bank to rescind Articles 2(2) and 2(4) of the Order concerning the Towns, Villages and Buildings Planning Law (Military Order 418), which respectively abolished the district and local planning committees that had served villages in the West Bank when the territory was under Jordanian rule. The petitioners also requested that the justices issue an urgent interim injunction to delay the implementation of demolition orders for all structures built without permits in Area C for

(Index: MDE 15/59/99), December 1999; Amnesty International, *Under the rubble: House demolition and destruction of land and property* (Index: MDE 15/033/2004), May 2004; Amnesty International, *As safe as houses? Israel's demolition of Palestinian homes* (Index: MDE 15/006/2010), June 2010; Amnesty International, *Stop the transfer: Israel about to expel Bedouin to expand settlements* (Index: MDE 15/001/2012), February 2012.

² Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, Annex III: Protocol Concerning Civil Affairs, Art. 27, Planning and Zoning.

the duration of the legal proceedings, or at the very least for structures located in or near built-up areas and objects essential for survival, such as wells and cisterns. The justices refused to issue an interim injunction, and the Israeli authorities have demolished more than 1,875 structures in Area C since the petition was filed.

On 28 April 2014, the Israeli Supreme Court, sitting as the High Court of Justice, issued an interim decision directing the state to propose ways to facilitate participation of Palestinians living in Area C in planning decisions. The state's response argued that Israel is facilitating participation through the Civil Administration internal directive that meetings should be held with relevant villages prior to the deposition of plans developed by Civil Administration planners. Following an additional response submitted by the petitioners arguing that this limited step is insufficient to meet Israel's international obligations, another hearing will be held on 12 April 2015.

Area C consists of over 60% of the occupied West Bank where the Israeli military retains full control of civil powers, such as planning and zoning, as well as security. Palestinian development is completely banned by the Israeli authorities in some 70% of Area C, which is included within the regional councils of Israeli settlements, and is heavily restricted in a further 29%. Only about 1% of Area C has been planned for Palestinian development by Israel's Civil Administration. At least 180,000 Palestinians live in Area C, but total population figures are difficult to determine because many Palestinian communities are located partly in Area C and partly in areas where the Palestinian Authority received control of municipal affairs under the Oslo Accords. A survey conducted by the UN Office for the Coordination of Humanitarian Affairs (OCHA) in 2013 estimated that there were 297,900 Palestinians living in Area C in about 530 residential areas. In 2014 alone, the Israeli authorities demolished 493 structures in Area C, displacing 969 Palestinians, according to UN OCHA figures.