



הוועד הישראלי נגד הריסת בתים
The Israeli Committee
Against House Demolitions
الحركة الاسرائيلية ضد هدم البيوت

INFORMATION FOR THE ADOPTION OF LIST OF ISSUES FOR ISRAEL BEFORE THE HUMAN RIGHTS COMMITTEE (ICCPR)

HUMAN RIGHTS COMMITTEE, 105TH SESSION, JULY 2012



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The Israeli Committee Against House Demolitions (ICAHD) is a human rights and peace organization established in 1997 to end Israel's Occupation over the Palestinians. ICAHD takes as its main focus, as its vehicle for resistance, Israel's policy of demolishing Palestinian homes in the Occupied Palestinian Territory and within Israel proper. ICAHD was awarded ECOSOC Special Consultative Status in 2010.

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I. Executive Summary

1. ICAHD submits the following information for consideration by the United Nations (UN) Human Rights Committee (the Committee) in advance of its Country Report Task Force 105th Session, July 2012. This submission focuses on Israel's protracted failure to comply with human rights obligations in relation to the occupation of the Palestinian territory, and its responsibility to respect, protect and fulfil Palestinians' human rights, in accordance with international law and standards. Notably, Israel's protracted non-compliance with Article 1 (1), Article 2 (1), Article 12 (1), and Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

2. While Israel persistently refuses to provide information on the implementation of ICCPR in the Occupied Palestinian Territory (OPT), including occupied and illegally annexed East Jerusalem, this submission provides the Council with pertinent information on the plight of Palestinians under the effective control of Israel. UN Treaty Bodies have consistently negated the Israeli position that international human rights law (IHRL) does not apply extraterritorially in the OPT, and they have not accepted Israel's assertion that it can legitimately differentiate between Israelis and Palestinians in the OPT on the basis of citizenship. It is ICAHD's position that international human rights law is applicable to all territory over which a state exercises effective control, including occupied territory, as was expressed by numerous UN Treaty Bodies, and most notably the International Court of Justice (ICJ) Advisory Opinion on the Wall (2004): **"The Court would observe that, while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions."** Additionally, the Committee's General Comment no. 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant) Article 10: **"States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. [...] the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness [...] This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained."** While the prevalent legal regime in belligerent occupation is international humanitarian law, the Committee further established that: **"[...] the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable.[...] both spheres of law are complementary, not mutually exclusive."**

3. The Palestinian population in the OPT, including occupied and illegally annexed East Jerusalem, continues to endure violence, displacement, dispossession and deprivation as a result of prolonged Israeli occupation, in most cases in violation of their rights under IHRL and international humanitarian law (IHL). In the West Bank, including East Jerusalem, demolitions are a major cause of the destruction of property, including residential and



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livelihood-related structures, and displacement. In 2011, a record year of displacement, a total of 622 Palestinian structures were demolished by Israeli authorities, of which 36% (or 222) were family homes; the remainder were livelihood-related (including water storage and agricultural structures), resulting in 1,094 people displaced, almost double the number in 2010. As of June 2012, 307 structures had been demolished since the beginning of the year, including 100 family homes. As a result, 538 people were displaced and offered neither alternative housing nor compensation. All recorded demolitions raise suspicions of having been carried out in defiance of international law, and together likely constitute a grave breach of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, to which Israel is a signatory and which constitutes customary international law.

4. The demolition of Palestinian homes and other structures, forced or resulting displacement and land expropriation are politically and ethnically motivated. The goal is to limit development and confine the four million Palestinian residents of the West Bank, East Jerusalem, and Gaza to small enclaves, thus effectively foreclosing any viable, contiguous Palestinian state and ensuring Israeli control and the "Judaization" of the occupied West Bank and East Jerusalem.

5. Judaization refers to the view that Israel has actively sought to transform the physical and demographic landscape to correspond with a vision of a united and fundamentally Jewish land under Israeli sovereignty in historic Palestine. Israel pursues a concerted policy land expropriation, demolitions, forced evictions and discriminatory development, displacing Palestinians and introducing Jewish inhabitants. Israeli Government ministries openly continue to advance 'evict and Judaize' programmes, whereby Palestinians are displaced, directly or indirectly, and Jewish inhabitants are introduced in their place, despite international remonstrations.

6. We are witnessing a process of ethnic displacement and Judaization – institutionalized policies designed to alter the ethnic, religious or racial composition of an affected population: Palestinians residing in Area C of the occupied West Bank and East Jerusalem. This strategy has resulted in many members of that population relocating to Areas A and B, which are nominally under Palestinian Authority control. Israel's policies also create a situation not only of displacement, but also of de facto forced deportation, which may rise to the level of a war crime. For instance, East Jerusalem Palestinians who have relocated to the West Bank or elsewhere based on Israel's building and demolition policies may face residency revocation and be barred from reentering East Jerusalem, thus de facto deporting them. In some cases Palestinians have been physically deported from their communities, such that Israel has indeed committed the war crime of forced deportation.

7. Moreover, following a February 2012 visit to the West Bank and East Jerusalem, the UN Special Rapporteur on the Right to Adequate Housing, Prof. Raquel Rolnik concluded that in the West Bank the territorial fragmentation and the severe deterioration of Palestinian standards of living are furthered by decades of accelerated expansion of Israeli settlement units that expropriate land and natural resources. **"To a certain extent, these territorial and demographic changes promoted in the West Bank mirror changes [that] occurred within the Israeli territory after 1948, where Palestinian presence was progressively limited in**



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parallel to a disproportional support to the expansion of Jewish communities." Prof. Rolnik concluded that after the Oslo agreements Israel retained official temporary control over the vast majority of the occupied West Bank (Area C). At present more than half a million Israeli-Jews have settled in the Occupied Palestinian Territory, including East Jerusalem: **"Throughout my visit, I was able to witness a land development model that excludes, discriminates against and displaces minorities in Israel which is being replicated in the occupied territory, affecting Palestinian communities. The Bedouins in the Negev – inside Israel, as well as the new Jewish settlements in Area C of the West Bank and inside Palestinian neighborhoods in East Jerusalem – are the new frontiers of dispossession of the traditional inhabitants, and the implementation of a strategy of Judaization and control of the territory."**

II. Israeli Practices and Policies of Property Demolition and Forcible Transfer

8. Israel's practices in the OPT violate Palestinians' economic, social, cultural, civil, and political rights enshrined in several bodies of IHRL. Notably, the human right to adequate housing is contained, *inter alia*, in the Universal Declaration of Human Rights of 1948 (Art. 25(1)); the International Covenant on Economic, Social and Cultural Rights of 1966 (Art. 11); the International Covenant on Civil and Political Rights of 1966 (Art. 17); the International Convention on the Elimination of All Forms of Racial Discrimination of 1969 (Art. 5(e)(iii)); and the Convention on the Rights of the Child of 1990 (Arts. 16, 27).

9. The right to adequate housing, enshrined in the ICESCR, is an essential component of the right to an adequate standard of living. When guaranteed, it provides a foundation for the realization of other rights, including the rights to family, work, education, and ultimately, national self-determination. Furthermore, Israeli policies violate its commitments under the ICERD, notably, Article 5(e)(iii) regarding the right to housing. We further wish to recall that The UN Committee on Economic, Social and Cultural Rights (CESCR) in its 2011 concluding observations (E/C.12/ISR/CO/3) called upon Israel to stop forthwith house demolitions, forced evictions and residency revocation in the Occupied Palestinian Territory and East Jerusalem: **"The Committee is deeply concerned about home demolitions and forced evictions in the West Bank, in particular Area C, as well as in East Jerusalem, by Israeli authorities, military personnel and settlers. The Committee urges the State party to stop forthwith home demolitions. The Committee also recommends that the State party review and reform its housing policy and the issuance of construction permits [...], in order to prevent demolitions and forced evictions and ensure the legality of construction in those areas."** Moreover, the Committee on the Elimination of Racial Discrimination (CERD) called Israel in its 2012 concluding observation (CERD/C/ISR/CO/14-16) to take immediate measures to eradicate apartheid policies or practices which severely affect the Palestinian population in the OPT, and which violate the provisions of the Convention on the prevention of racial segregation and apartheid: **"The Committee draws the State Party's attention to its General Recommendation 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urges the State party to take immediate measures to prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory."**



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10. Under ICCPR Israel is obligated to create and maintain conditions that will ensure Palestinians' realization of their rights to self-determination, participation without discrimination in public affairs, and their right, as individuals and collectively, to develop and advance their respective communities economically, socially, culturally, and politically, according to their needs. That assertion has been authoritatively upheld by the ICJ in the aforementioned 2004 Advisory Opinion, directly relating to ICCPR: **"The Court also notes that the principle of self-determination of peoples has been enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625 (XXV) cited above, pursuant to which "Every State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] [...] of their right to self-determination." Article 1 common to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights reaffirms the right of all peoples to self-determination, and lays upon the States parties the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the United Nations Charter. [...] Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law. The Court would observe that the obligations violated by Israel include certain obligations *erga omnes*. [...] The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law."**

11. As the Occupying Power, Israel is obligated to safeguard the homes of the protected persons under IHL (namely the Hague Regulations and the Fourth Geneva Convention, both of which constitute binding customary international law). Israel's claim that the Fourth Geneva Convention does not apply to the OPT has been consistently rejected by the international community, including the UN Security Council and the International Court of Justice. Additionally, Israel's policies and practices in East Jerusalem and Area C of the West Bank may very well constitute 'inhuman acts' under Article 7(1)(d) and 'war crimes' under Article 8(2)(a)(iv) of the Rome Statute of the International Criminal Court, as well as a violation of the UN Convention on the Suppression and Punishment of the Crime of Apartheid of 1973.

III. East Jerusalem

12. East Jerusalem is currently home to approximately 240,000 Palestinians. They experience racial discrimination in many spheres of life, from education to cultural development to housing, and are the subject of a process of ethnic displacement that is the cumulative result of the policies and practices applied to them, particularly those pertaining to housing and legal status. Numerous official government documents express the deliberate intent to limit the Palestinian population growth in the city of Jerusalem.

13. Israel's policies and practices vis-à-vis Palestinian East Jerusalemites constitute institutionalized discrimination and domination of one population over the other with the intent to perpetuate this domination through strengthening the numbers and socio-economic well-being of one population at the expense of another. The maintenance of a demographic balance based on ethnicity or nationality constitutes, *prima facie*, an illegal and



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repugnant practice of discrimination that is reminiscent of the motivation behind policies of racial segregation and apartheid.

14. What is more, the results of these policies are already tangible. Israel's discriminatory planning and housing policies and practices in East Jerusalem, including administrative home demolitions and discriminatory residency policies (particularly since the start of the Second Intifada), have set into motion a process of "ethnic displacement" of parts of the Palestinian population of East Jerusalem. Should the status quo of policies and practices remain – or worsen – this process of ethnic displacement will only intensify to the point it will not be reversible

IV. Area C

15. Following the 1995 Interim Agreement on the West Bank and the Gaza Strip and the subsequent agreed division of the Occupied West Bank, Area C - consisting of 62% of the West Bank - remained under full Israeli security and civil control, an arrangement that has remained following the halt in negotiations. This partition severely fragments Palestinian communities as well as isolates a great expanse of rural area in Area C, while enclosing heavily built-up enclaves in Areas A and B. Thus, while 150,000 Palestinians reside in Area C, the remaining 2.3 million are squeezed into 38% of the territory.

16. Palestinian presence in Area C has continuously been undermined through different administrative measures, planning regulations and other means adopted by Israel as Occupying Power, including wanton demolition of Palestinian residential and livelihood-related structures. The increasing depopulation and integration of Area C into Israel proper has left Palestinian communities in the area ever more isolated and at growing risk of displacement, while the expansion of illegal Israeli settlements in Area C continues to flourish under detailed plans approved by the Israel Administration which incorporate expansion areas nine times the size of the current built-up areas.

17. If current trends are not stopped and reversed, which seems unfeasible, the establishment of a viable Palestinian state within the pre-1967 borders seems more remote than ever. In actuality, the window of opportunity for a two-state solution has closed, mainly due to the continued expansion of Israeli settlements and access restrictions for Palestinians in Area C, the only contiguous area in the West Bank surrounding Area A and B. Moreover, Israeli Parliament Members, hailing from the Likud ruling party and other members of the coalition government have recently established a parliamentary caucus for the annexation of Area C. The caucus introduced a draft bill in May 2012, calling for the application of Israeli sovereignty to Area C of the West Bank. Deliberations on the draft bill were postponed by the Prime Minister, but are likely to resume shortly. The parliamentary caucus relates to the "Partial Annexation and Pacification" program advocated for by the former Prime Minister Chief of Staff, explicitly calling for the *de jure* annexation of 62% of the West Bank in order to stifle the Palestinian people aspiration for self-determination, and solidify Israeli dominance.



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V. Impact of Prolonged Occupation

18. The illegal Israeli practice of demolishing homes, basic infrastructure and the sources of livelihoods continues to shatter Palestinian communities in East Jerusalem and Area C. Demolitions are almost invariably in contravention of international law and lead to a significant deterioration in living conditions for entire communities. As a result, large numbers of Palestinians face increased poverty and long-term instability, as well as limited access to basic services such as education, health care, water and sanitation. The destruction must be discontinued, and the damage remedied if Israel is to meet its obligations under international law to guarantee the human rights of Palestinians.

19. However, for a viable, just solution to be attained, and for the realization of the alienable right to national self-determination, the very nature and legality of occupation must be addressed.

20. In a December 2011 controversial ruling on the legality of Israeli owned quarries in the West Bank, the Israeli High Court of Justice held that the unique characteristics of Israel's belligerent occupation of the OPT, primarily its duration, grant additional powers and rights to the occupying power under international humanitarian law. The Court's misguided interpretation of IHL seeks to modify its provisions on the pretext of prolonged occupation to allow for economic exploitation of occupied territory. This dangerous approach is reflected in the long-term, entrenched relationship of occupied and occupier in the OPT and East Jerusalem, starkly contradicting the Palestinian aspiration for national self-determination.

21. The tension between an occupying power's duty to maintain the status quo in an occupied territory (presumably in anticipation of a permanent sovereign quickly assuming control over the territory, immediately following the pacification of armed conflict) and its duty to maintain public order and safety grows ever more significant in the case of a prolonged occupation, such as Israel's. It must therefore be kept in mind with regard to the right to development that calling on Israel to create conditions for Palestinians to develop and progress is potentially at odds with its obligation to refrain from making legal and physical changes to the territory. However, ICAHD firmly holds that despite the complexities of the situation, Israel's occupation can no longer be considered temporary and that other obligations should be invoked, such as the right to development and the right to self-determination.

22. In a short-term occupation, this tension would seem to favour leaving the occupied territory and its laws as untouched as possible, until such time as a legitimate sovereign assumes power and enacts the necessary laws, policies and practices to maintain safety and order. Leaving the laws and urban plans of the occupied territory as they were when occupation began (in this case, more than four decades ago) could have detrimental consequences for Palestinians. Such consequences might violate the occupying power's duties under IHL and IHRL.



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We further wish to recall the statement made by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 Prof. Richard Falk (November 2010): **“The Palestinian experience suggests the need for a new protocol of international humanitarian law, some outer time limit after which further occupation becomes a distinct violation of international law, and if not promptly corrected, constitutes a new type of crime against humanity.”**

23. ICAHD firmly holds that the UN General Assembly should call for an ICJ Advisory Opinion that establishes a new normative paradigm of prolonged occupation; reinforces the alienable human rights of the Palestinian people to development and self-determination; and depicts the scope and magnitude of Israel's illegal policies and practices in the OPT, beyond what are IHL breaches and what was referred to in the 2004 Advisory Opinion; and upholds the legal obligations of all states and international organizations to cooperate to end Israel's breaches, and prolonged occupation.

VI. Recommendations

ICAHD encourages the Committee to adopt the following issues in relation to the State Party report:

24. To express deep concern that Israel refuses to apply obligations contained in human rights treaties to the Palestinian population in the OPT, or to report on the situation of Palestinians in the occupied territory, and reiterate its position that Israel must respect, protect and fulfill Palestinians rights enshrined in the ICCPR, and report accordingly.

25. To register grave concern with Israel's continuing deplorable practices of house demolitions, land expropriation, and its adoption of policies resulting in inadequate housing and living conditions for Palestinians living under prolonged occupation.

26. To register grave concern that Israel's settlement policy in the OPT and policy of displacement towards Palestinian residents of East Jerusalem amounts to forced population transfer, and may in some cases amount to a war crime.

27. To insert the issue of the legality of a prolonged Israeli occupation, which has outlived the armed conflict that spawned it by 45 years and with no time limit in sight, into the Committee's agenda that explores the legal implications of a prolonged and indefinite occupation that has morphed into a new type of crime against humanity.

ICAHD recommends the Committee urge Israel to:

28. End the prolonged occupation of the Palestinian Territory, and respect, protect and fulfill Palestinians' right to national self-determination.

29. Immediately cease to demolish Palestinian houses, and infrastructure, which causes displacement and dispossession.



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30. Immediately cancel and cease issuing all stop work, demolition and eviction orders against Palestinian homes and structures in the OPT, including East Jerusalem. Israel should grant building permits for Palestinians living in Area C and East Jerusalem in a manner consistent with the development needs of the communities and their status as protected persons under IHL and IHRL. In the context of planning schemes, Israel should grant retroactive building permits to reverse the impact of past discriminatory policies.

31. Transfer powers and responsibilities related to planning and zoning in the West Bank, including Area C, to Palestinian jurisdiction in accordance with international law and bilateral agreements, to allow for genuine involvement of Palestinian communities in the planning process.

32. Eliminate any policy of 'demographic make-up' from its Jerusalem Master Plan and ensure non-discrimination in zoning and planning, municipal services, and budget allocation.

33. Ensure all refugees and internally displaced persons, which have been forcibly displaced be allowed to return to their homes in safety and dignity, and be given compensation for any harm they have suffered, including the destruction of land, homes and property, in accordance with UN Resolution 194.

34. ICAHD calls all states and international organizations to cooperate to bring an end to Israeli prolonged occupation, and illegal practices and policies that arise from it. All states and international organizations must consider appropriate measures to exert pressure on Israel to end the prolonged occupation, including an ICJ Advisory Opinion on the legality of Israeli practices arising from prolonged occupation, appropriate sanctions, and the severing of diplomatic relations. Further, ICAHD calls for the suspension of the EU-Israel Association Agreement, and the US-Israel Free Trade Agreement, until Israel complies with international law, and ends its illegal policies and practices and prolonged occupation.