



הוועד הישראלי נגד הריסת בתים  
The Israeli Committee Against House Demolitions  
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# **ISRAEL/OCCUPIED PALESTINIAN TERRITORY BRIEFING TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

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**The Israeli Committee Against House Demolitions (ICAHD) is a direct-action 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.**

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## Introduction

The Israeli Committee Against House Demolitions is submitting this brief to the United Nations Committee on Economic, Social and Cultural Rights in relation to the list of issues to be taken up in connection with the third periodic report of Israel on the implementation of the International Covenant on Economic, Social and Cultural Rights.

The peoples of Palestine/Israel aspire to national self-determination, yet have to recognize the collective existence and rights of the other. While holding different visions of desirable and possible solutions to the conflict, we firmly hold that Israel should be held accountable for its actions and policies regarding the Occupation of the Palestinian territory and for respecting, protecting and fulfilling Palestinians human rights, in accordance with international law and standards.

Instead, since 1967 Israel has demolished over 25,000 Palestinian homes in the Occupied Palestinian Territory. The motivation for demolishing these homes is purely political: to either drive the Palestinians out of the country altogether or to confine the four million residents of the West Bank, East Jerusalem and Gaza to small, crowded, impoverished and disconnected enclaves. This policy will effectively foreclose the possibility of any viable Palestinian entity and the realization of Palestinian self-determination, while solidifying Israeli control, illegal settlement expansion and *de facto* annexation of the occupied territory.

Taken against the background of Israel's systematic destruction of more than 500 Palestinian villages, towns and urban neighborhoods in the 1948 war and subsequently, as well as its ongoing policy of demolishing the homes of Palestinian citizens of Israel in the so-called "unrecognized villages," the picture that emerges is one of ethnic cleansing.

Such policies violate fundamental human rights and international law, such as the commitments taken by state parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR), and constitute a major obstacle to achieving justice, peace and reconciliation among the peoples of the region.

The following brief, while not exhaustive, highlights the state party protracted non-compliance to with obligations stemming from the ICESCR and other human rights instruments. While Israel persistently refuses to provide information on ICESCR implementation in the Occupied Palestinian Territory, this brief provides the Committee with pertinent information on the plight of Palestinians under the effective control of Israel.

## Article 1 – Self-Determination

### Palestinian Self-Determination and Statehood

The Israel-Palestine conflict concerns two peoples, two nations, each of which claims the collective right of self-determination. This is an essential element in the formulation of any solution, including a bi-national one-state solution, and within it both the collective and individual human rights of all the inhabitants of Palestine/Israel must be defined and guaranteed.

Israel is obligated under international human rights law to create and maintain conditions for Palestinians' realization of their rights to self-determination, participation without discrimination in public affairs, and the collective ability of groups to develop and advance their respective communities economically, socially, culturally and politically, according to their needs. Additionally, Israel, as the occupying power, is obligated under the provisions of the UN Charter, the Universal Declaration on Human Rights, the two human rights covenants (the ICCPR and the ICESCR) and international humanitarian law, to maintain public order and safety in the occupied territory,

### Iqrit

As the Committee addresses the Libai Committee findings and the lack of implementation by the state party, this brief recalls that the residents of the Palestinian village Iqrit were ordered by the Israeli military to leave their village in November 1948, under the guise of its being declared a closed military zone, with the assurance they will be allowed a prompt return. When they were not allowed back and even denied restitution, the residents of Iqrit took their case to the law courts of the newly founded state of Israel. The Supreme Court duly ruled in 1951 that the residents should be allowed to return to their village as the reason for temporary evacuation no longer existed<sup>1</sup>.

The military defied this ruling and destroyed both the villages of Iqrit and Bir'im. The Israeli Prime Minister, David Ben Gurion, denied having issued an order for the destruction and maintained that the Israeli armed forces had acted on their own initiative. This provided the backdrop for the land acquisition law, approved by the Israeli Parliament in 1953 (also referred to as the Expropriation for the Public Interest Law), which declared that a property which on 1st January 1952 was not in the possession of its owners could be confiscated by the state. This law effectively transferred ownership of the village to the state.

Undeterred, the villagers continued to fight their case in the courts. Their persistence led to a number of governmental committees that conducted

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<sup>1</sup> HCJ 64/51 Dawwod vs. Defense Minister 1951, P.D. 5(2): 1118

investigations into the case. The most notable of these was that of the Israeli Jurist Dr. David Libai in 1996. The Libai committee concluded that the people of Iqrit should be allowed to return to their village. It was recommended that 600 to 800 dunam be returned to the people on the land that they previously inhabited and that each family be granted permits to build. It must be noted that this report was only a recommendation and did not bind the government in anyway. Until this day the Israel government continues to refuse the villagers permission to return to Iqrit.

It is commonly argued by the Israel authorities that there are strong reasons against allowing the people of Iqrit to return. In particular it is argued that allowing the people of Iqrit to return would give other Palestinians who had been removed from their homes false hope that the state of Israel is willing to allow them to return to their pre- 1948 properties as well. The fear is of creating a 'snowball effect' by which, if the people of Iqrit are allowed to return, the percent will open up cases for the hundreds of other villages that were either internally displaced or otherwise rendered refugees.

The notion that monetary compensation can replace actual return deflects attention from the issue at hand: of a village that was unlawfully displaced and the legitimate and recognized right of its inhabitants to return to their homes. The people of Iqrit are merely demanding to be allowed to rebuild their village and revive their community on their ancestral land.

### Dahmash

The cruel practice of displacement, in contravention of ICESCR obligations, is not limited to the past, but rather constitutes a constant threat to Palestinian citizens of Israel. One such community at risk is Dahmash, an unrecognized Palestinian village in central Israel (Emek Lod Regional Council), whose residents were internally displaced, uprooted from their homes during and after the 1948 war. The village is denied recognition and its residents are deprived of essential services and infrastructure required for an adequate standard of living.

Currently, 600 people live in Dahmash, in 70 family homes. The lands of the village are privately owned by the Palestinian families, following a compulsory land swap. However, local municipalities and the planning authorities ignored the existence of Dahmash and failed to prepare a master plan for the village. Thus, building permits could not be issued to any of the houses of the village. The people of Dahmash face constant fear of demolition and forced eviction, with no alternative housing or compensation offered by the authorities.

Dahmash residents have been struggling for years to secure recognition of their village and their right to housing and services. The failure of Israeli municipal and national authorities to consult with the community, to respect and protect their rights, is a grave violation of the social and economic rights enshrined in the ICESCR

and is designed to deny Palestinian citizens of Israel collective self-determination and equitable treatment.

## Article 9 – The Right to Social Security

### East Jerusalem

Of the over 300,000 Palestinians resident in East Jerusalem, the vast majority are recognized under Israeli law as permanent residents rather than citizens of Israel. As is confirmed in *Awad vs. Shamir*<sup>2</sup>, this reduces native Palestinian Jerusalemites' legal status to that of foreign citizens resident in Israel, thus exposing them to the vulnerability of their residency rights being revoked and consequently losing the social services to which they are legally entitled. This in turn leads to the ethnic displacement of Palestinians from East Jerusalem, while simultaneously contributing to the Judaization of East Jerusalem.

As Israel's annexation of Jerusalem contravenes international law, East Jerusalem and the remaining occupied Palestinian territory are internationally recognized as one contiguous occupied territory<sup>3</sup>. Thus Israel is under a legal obligation to ensure the freedom of movement of Palestinians within the territory. However, apart from the limited family unification process, Palestinians from the West Bank or Gaza Strip are prohibited from exercising their right of residency in East Jerusalem.

Thus the right of Palestinians to live in East Jerusalem under Israeli law is limited primarily to persons who happened to be residing within the Israeli-defined municipal boundary of Jerusalem following the 1967 occupation. Although the option of citizenship was made available to Palestinian Jerusalemites, it was largely declined, especially given the political preconditions, the taking of an oath of loyalty to the State of Israel in particular<sup>4</sup>. However the status of "permanent resident," far from creating a viable alternative, can be easily revoked, consequently denying Palestinian Jerusalemites their residency rights and access to basic social services.

Following the *Awad* ruling, retaining permanent residency is conditional on complying with Israel's "centre of life" policy and thus may be revoked at the discretion of the Minister of the Interior. This policy dictates that if an individual does not centre their life in Jerusalem, their residency and its accompanying rights will be revoked.

Maintaining actual presence in Jerusalem is a determining factor in retaining residency, as residing outside East Jerusalem for seven years or more will trigger revocation. Palestinians must provide municipal tax receipts and electricity, gas and telephone bills to prove their continued presence. However, this policy extends beyond merely residing in Jerusalem. This "will not suffice if an individual relocates

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<sup>2</sup> HCJ 282/88, *Mubarak Awad v Yitzhak Shamir et. Al* 42(2) PD 426

<sup>3</sup> UN Security Council Resolution 252, 476 and 478

<sup>4</sup> Sec 5 of the Citizenship Law, 1952.

their “centre of life” by attending a school or working outside Jerusalem,<sup>5</sup> including in an adjoining East Jerusalem neighborhood.

Despite a lull in revocations following the Sharansky Declaration in 2000, recent years have seen a sharp surge with over 4500 revocations in 2008 alone, resulting in over 14,000 revocations to date, some of which occurred automatically and without due process. Following revocation of residency, an individual loses their right to social benefits acquired through years of mandatory contributions, including health care, social security, welfare and education, as well as the right to vote in municipal elections, live and work in East Jerusalem and Israel and apply for a *laisser-passer* travel document.

Furthermore access to social services can be severely impaired even in cases which do not result in revocation of residency due to the requirement that East Jerusalem permanent residents continuously “prove” their entitlement to these services. In addition to substantial processing fees, this can result in significant delays during which an individual is effectively denied for months or even years such benefits as unemployment, disability, child allowance or pension.

The widespread revocation of residency is strongly propelled by Israeli settler expropriation of Palestinian property in East Jerusalem. Contributing to Israel’s stated policy of maintaining a Jewish majority in the city, expropriations and evictions exacerbate the already severe housing shortage in East Jerusalem created by restrictive zoning and planning and inadequate government investment.

Despite international consensus on the illegality of the settlements, most recently upheld by the International Court of Justice<sup>6</sup>, the settlers’ organizations are supported by and work closely with the Israeli government. This is evident in the initiation of expropriation proceedings, whereby the government actually facilitates the acquisition of properties, as is illustrated by the Defense Ministry’s handing over the Shahabi, Mialah, and El Tahari family homes confiscated on security grounds directly to the settlers.

Two of the starkest examples of settler expropriation of densely populated Palestinian property relate to the ‘Holy Basin’ area of East Jerusalem, where the Palestinian neighborhoods of Silwan and Sheikh Jarrah re located.

El’ad, the leading settler organization at the helm of the campaign of expropriation in Silwan, has renamed it the City of David and boasts of having seized over 70% of the area, much of which is still inhabited by Arab citizens. To date approximately 50 settler families reside in Silwan, comprising almost 300 individuals. Concurrently, over a thousand Palestinian residents of Silwan are at risk of displacement due to a municipality initiative to demolish 88 houses in the al-Bustan neighborhood under the guise of exposing an archaeological site. In effect, this would Judaize the

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<sup>5</sup> HCJ 7023/94, *Fathiya Shqaqi, et. Al v. Minister of Interior*, Takdin Elyon 95(2)

<sup>6</sup> *Advisory Opinion of the ICJ on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 9 July 2004*

immediate area as well as contribute to the territorial contiguity of Jewish neighborhoods in the east of the city.

The settlements of Shimon Ha'Tzadik, established by Meyashvei Zion, and the planned settlement on the site of the Shepherd's Hotel in Sheikh Jarrah, are strategically located to fragment Palestinian neighbourhoods while connecting different Jewish settlements with densely inhabited corridors passing through them. They therefore further contribute to the process of Judaization and to the ethnic displacement of Palestinians. Two common methods used here to expropriate Palestinian property are the Absentee Property Law and the appropriation of alleged pre-1948 Jewish property. Under the Absentee Property Law 1950, property belonging to Palestinians who had been caught in the West Bank, Gaza or any Arab state during the 1948 war was deemed abandoned and thus transferred to the Custodian of Absentee Property. Hence the Shepherd Hotel, built and owned by the Husseini family, was appropriated by the Custodian of Absentee Properties and was demolished in January 2011 so that the settler organisation Ateret Cohanim could build on the site 20 residential units for which they had been given formal approval.

The tactic of using Israeli law to appropriate property that was allegedly owned by Jewish individuals' pre-1948 is being used by Meyashvei Zion to evict long-term Palestinian residents from their homes in the Karm Al Ja'ouni and Kubaniyat Im Haroun areas of Sheik Jarrah, and to strengthen the settlement of Shimon Ha'Tzadik on the site.

Although Israel recognises such claims, Palestinians are denied the reciprocal right to reclaim land and properties in Israel. The forced evictions of the Palestinian residents and the subsequent likelihood of revocation of residency and loss of social services is particularly jarring given the traumatic history of this community being made refugees in 1948.

## **Article 11 – The Right to an Adequate Standard of Living**

### **Area C**

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 60% of the West Bank, remained under full Israeli control regarding security and planning and zoning, 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. This cramps the natural expansion of the Palestinian communities in the West Bank and makes it impossible to maintain an adequate standard of living. Thus while 150,000 Palestinians reside in Area C, the remaining 2.3 million are squeezed into 40% of the territory, and that fragmented into more than 70 tiny enclaves surrounded by Israeli settlements, highways, military bases and, of course, the Separation Barrier/Wall. Due to the discriminatory and limiting planning and zoning



policies that Israel currently administers in an area which already lacks basic public infrastructure, families are struggling to meet their basic needs. This is triggering a growing trend of displacement from Area C to both Areas A and B and within Area C, threatening the very existence of these communities and coupled with Israeli settlement activity, setting the ground for additional ethnic cleansing of the West Bank.

Despite Israel's responsibility in the ICESCR to recognize "the right of everyone to an adequate standard of living ... and housing", Israel's housing policy in Area C makes enjoying this basic right nearly impossible. In practice, construction is currently permitted in less than 1% of the area. The overwhelming majority of Area C is allocated to Israeli settlements and military installations, thus denying Palestinians building permits in 70% of the land. Allocating land for military training is not confined to unpopulated areas but can occur in the heart of Palestinian residential communities such as in Khirbet Yarza in the Jordan valley. In the remaining 30% of the land, intended construction is conditional on complementarity with a plan endorsed by the Israeli Civil Administration, of which less than 1% satisfies this requirement. Thus Palestinians are faced with the choice of building irregularly ("illegally") or leaving their communities. This policy is violently enforced; the demolition of homes and other infrastructure such as schools and health clinics is a regular occurrence. The first half of 2011 alone saw over 340 structures demolished, resulting in the displacement of 656 Palestinians including 351 children. Palestinians are never consulted prior to the demolition, at best receiving a demolition order, and never known when the demolition will actually occur. Moreover, alternative sources of housing or effective remedies are not provided, forcing families off the land and often rendering them unable to secure a source of livelihood.

In the meantime, the expansion of illegal Israeli settlements in Area C flourishes under detailed plans approved by the Israeli Civil Administration for expansion into areas nine times the size of the built-up areas. The fact that many of the officials staffing the Israeli Civil Administration and influencing planning and zoning policy are themselves settlers – in particular the on-site building inspectors known for their aggressive behaviour towards Palestinian families -- highlights an underlying conflict of interest.

Contributing considerably to the displacement of Palestinians in Area C is the restriction on movement and access to water, land and basic services. This is particularly severe in the herding communities such as the Bedouin and in sedentary villages located in remote areas. Due to the Barrier, settler expansion and violence, and the isolation of land as closed military zones, access to land for grazing livestock, collecting hay and water and cultivation is severely restricted. Communities are now forced to purchase such necessities at a premium. This has resulted in a dramatic decrease in herd sizes and increase in debt such as in the Palestinian-Bedouin community of Wadi Abu Hindi where shepherds, who once had 200 heads of sheep, are left with 50. Other affected communities include Um al Kher, Jubbet adh Dhib, and Maghayer Al Deir, where these policies have caused a noticeable deterioration of their standard for living.

The principal impact of Israel's policies in Area C is the ethnic displacement of Palestinians from their rural communities, with thousands more at risk and the foreseeable obliteration of entire communities. This in turn affects both the emotional and socio-economic well-being of the displaced families, especially since a large proportion of the community suffers from the added vulnerability of a history of displacement, having been made refugees in 1948. Symptoms range from dependency on humanitarian aid to deep psychological trauma, especially in children, including anxiety, depression and post-traumatic stress disorder. This is all exacerbated by Israel's interference with the aid provided by the humanitarian community as is evidenced by the demolishing of tents provided following house demolitions.

Israel's practices in Area C violate the right to adequate housing enshrined in several bodies of international human rights law. Specifically, the human right to adequate housing is contained, *inter alia*, in the Universal Declaration on 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)); the Convention on the Rights of the Child of 1990 (Arts. 16, 27); and General Comments 4 (1991) and 7 (1997) of the UN Committee on Economic, Social and Cultural Rights.

Additionally, Israel, as the occupying power, is obligated to protect the homes of the protected persons (Palestinians) under international humanitarian law (namely in the Hague Regulations and the Fourth Geneva Convention).

According to this legal framework, Israel is obligated to ensure that Palestinian in Area C are guaranteed access to legal, affordable, safe housing whether under Israel's obligations under international human rights law or international humanitarian law.

A process of displacing of a particular ethnicity is the result of institutionalized policies designed to alter the ethnic, religious or racial composition of the affected population. In contravention of international human rights law and international humanitarian law, Israel's policies create a situation of *de facto* forced deportation, which may rise to the level of a war crime. Additionally, Israel's policies and practices in Area C may very well constitute "inhuman acts" under the Article 7(1) (d) 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.

### **Jordan Valley**

Since its 1967 occupation, Israel has coveted the Jordan Valley for its economic potential. Robbed of the Jordan Valley, the Palestinians have no possibility of establishing a viable state. The last decades have seen an intensive policy of

colonization, with the summer of 2011 setting an all-time high in the expansion of settlements at the expense of Palestinian communities.

In the first eight months of 2011, house demolitions and forced evictions in the Jordan Valley have increased fivefold in comparison with last year. One hundred and eighty-four structures, predominantly family homes, have been demolished in recent months, forcibly displacing hundreds and dispersing entire communities. These constitute 48% of structures demolished and 53% of people displaced in the Occupied Palestinian Territory in 2011. The recent escalation in the Jordan Valley comes after a spate of settler aggression amid attempts to annex Palestinian lands adjacent to their settlements.

One such community is Fasayil al-Wusta, where a large-scale demolition took place in June 2011, with 21 structures, including 18 homes and three animal pens were demolished by the Israeli Civil Administration, leaving homeless and exposed to the harsh desert environment 103 people from 18 families, including 64 children.

Fasayil al-Wusta is home to a Palestinian-Bedouin community whose members originate from the area of Bethlehem. It is wedged between the settlements of Tomer, Yaift and Patzael, who covet the land, cultivated by Palestinians and have been actively pursuing their displacement to allow for the expansion of their settlement-plantations. The families of Fasayil al-Wusta were handed demolition orders in April 2011, and following the demolition were left without shelter, their sources of livelihood severely affected. Community members were consequently dispersed, allowing for Israeli settlements to once again encroach on their land.

The demolition was accompanied by brutality on the part of a 50-strong Border Guard force, which left community elder Ali Salim Abiat injured and requiring medical treatment in Jordan. No prior warning was given for the demolition, nor was any provision for relocation or compensation made to the victims of the demolitions, in contradiction of the commitments of state party to ICESCR article 11, and General Comment 4 and 7.

The measures employed by Israel stand in stark contrast to international human rights law and humanitarian law. They have imposed irreversible “facts on the ground” through settlements and military bases, overall colonization of the Jordan valley and the hindering of Palestinian development, present and future.

### **East Jerusalem**

In ratifying Article 11 of the International Covenant on Economic, Social and Cultural Rights, Israel acknowledges and commits to its legal obligation to recognize the right of Palestinian residents in Jerusalem to an adequate standard of housing and to the continuous improvement of their living conditions. In spite of this, however, Israel operates a Kafkaesque housing policy in which Palestinian residents in East Jerusalem are categorically denied the right to build legally, creating a marked deterioration in their living conditions and violating their right to an adequate

standard of housing. Incredibly, the motivation for this policy is openly attributed to the demographic aim of Judaizing the city. Given the consequent housing shortage and simultaneous increased demand for housing, residents are left with little alternative but to construct unauthorized buildings. When subsequently served with demolition orders, they are even induced for forced to self-demolish their own homes. Together with the growth of Israeli settlements and the policy of revocation of residency rights of Palestinian Jerusalemites, this policy, which 25,000 demolished Palestinian homes stand testament to, escalates the vulnerability of the Palestinian presence in Jerusalem while paving the way for Judaization.

Since the unilateral annexation of Jerusalem and the tendentious redrawing of its municipal boundaries, the demographic threat of a Palestinian majority in the city has occupied successive Israeli governments eager to secure the land as Israel's capital. This led to the adoption of the demographic balance policy, the stated aim being to maintain the 1967 ratio of 73.5% Jews to 26.5% Palestinians, although the current city master plan, "Jerusalem 2000" suggests a 60:40 ratio as a more realistic aim. Thus, although it is theoretically possible for a Palestinian resident to obtain a construction permit in East Jerusalem, in reality this is a rare achievement. The prime and usually insurmountable obstacles to a construction permit include discriminatory zoning and restricted construction areas, low plot ratios, a lack of public infrastructure, a Kafkaesque land registration system, and exorbitant costs.

Less than 9% of the land in East Jerusalem is available for Palestinian residential construction. Thirty-five per cent of East Jerusalem's 70.5km<sup>2</sup> of land has been expropriated for the construction of Israeli settlements, predominantly from private Palestinian owners. It currently contains 47,000 housing units -- not one a Palestinian housing unit. Another 30% of East Jerusalem is "unplanned"; construction there is entirely prohibited to Palestinians, including actual owners of the land.

A further 22% of East Jerusalem is zoned for public institutions, roads and green areas where Palestinian construction is also strictly forbidden. *Prima facie*, allocating land to preserve open spaces and agricultural use is a legitimate and necessary part of urban planning and zoning. However, in the present case, it is neither legitimate nor necessary. For it is common practice that while Palestinian residents are barred from building on land zoned as green area, Jewish settlements (such as Ramot, Reches Shu'fat and Har Homa) are built or expanded on the same land, now rezoned for Jewish development. Further, given the severe housing shortage, the land available for building is vastly inadequate for the needs of the community, such as in the neighbourhood of Jabal Mukaber, where almost 70% of the neighbourhood land is zoned as green space. "Green" land, often on the fringe of Palestinian built-up areas, also restricts legal expansion. Since 1967, the Palestinian population of East Jerusalem has increased from 66,000 to 300,000. In order to accommodate for this natural growth, the construction of an additional 1,500 housing units is required per year; yet on average only 400 units are authorised. The remaining 13% of the land in East Jerusalem is available for legal Palestinian construction of which 9% is available for residential use. However the majority is already built-up.

Another obstacle to legal construction is the relatively low building density allowed in Palestinian areas in contrast with that allowed in neighbouring Israeli settlements in East Jerusalem or in West Jerusalem. Although the new Jerusalem master plan “Jerusalem 2000” (not formally approved but implemented in practice) increases the permitted building density in both Palestinian and Israeli settler sectors in equal proportion, the prior disparity between them is maintained. Thus while the legal building density in West Jerusalem ranges from 75-125% of the plot’s area and in Israeli settlements in East Jerusalem from 140-200%, (allowing for the construction of eight story apartment buildings), in the Palestinian areas of East Jerusalem the range is between 25-75%, enough for perhaps two stories. Although the municipality attempts to attribute this disparity to the cultural needs of the Palestinians (“preserving the ‘village character’ of their communities”), the last three decades have witnessed a Palestinian cultural shift towards urbanisation. At no point has the Palestinian sector been consulted on the matter.

A prerequisite for obtaining a construction permit in East Jerusalem is the presence of adequate public infrastructure. However, due to the Palestinian sector being allocated only 5-10% of the municipal budget despite constituting over 35% of the population, there is a severe deficiency in public infrastructure in the Palestinian sector, including a lack of water pipes, a shortage of approximately 70 km of main sewage pipes, and a lack of decent roads. The estimated cost of upgrading the infrastructure to the level of that of West Jerusalem is approximately €435 million.

Obtaining a construction permit is also conditional on proving ownership of the land in question. Although this is a standard requirement in most jurisdictions and indeed in West Jerusalem is a simple procedure, in East Jerusalem it is extremely complex, particularly as Israel froze land registration in East Jerusalem in 1967, leaving half of the land unregistered. A Palestinian resident of Jerusalem applying today is highly unlikely to have the land registered in his/her name in the Israeli Land Registry as Israeli legislation requires. Although there is an alternative procedure for unregistered land, Palestinian residents are reluctant to use it, given the extraordinary difficult requirement of preparing and having approved a Plan for Registration for Purposes and its interplay with the Absentees’ Property Law. For the applicant runs the risk of the land being expropriated by Israel if a joint heir is held to be an “absentee” under the Absentees’ Property Law, a highly political definition. Thus the requirement to provide proof of ownership of the land in question further complicates the process of obtaining a construction permit.

A final hurdle to obtaining a construction permit is the cost of the permit itself which is estimated to be €15,393 for a 200m<sup>2</sup> house in 500m<sup>2</sup> of land. Although this is the same in both East and West Jerusalem, it is a much heavier burden on Palestinian applicants. For considerable subsidies, loans and tax incentives are available to most Jewish applicants that are unavailable to Palestinians. In addition, whereas in Jewish neighbourhoods this cost is distributed by construction companies among dozens of buyers, in East Jerusalem it is borne by individual families typically on low incomes. Thus Israel’s ethnic discriminatory housing policy in East Jerusalem renders legal Palestinian construction an almost guaranteed impossibility.

The effect of this housing policy is that Palestinian residents are given the choice of building illegally and living under constant threat of demolition or leaving the city and consequently having their right of residency revoked. Thus the majority of the Palestinian sector builds without construction permits. Since 2007, for every building constructed with a permit, another ten are constructed without one. Today there are between 15,000 – 20,000 unauthorised buildings in East Jerusalem, mainly housing units, accounting for 40% of the total number of buildings in the sector. One thousand five hundred homes have been slated for demolition, leaving over 60,000 Palestinians at risk. To date, over 2000 homes have been demolished in East Jerusalem alone.

In addition to the physical risk of demolition, Palestinian residents who build without a construction permit face heavy fines and possible imprisonment. Although illegal structures are demolished throughout the city, Palestinians bear the brunt of the penalties imposed. For fines are calculated according to the size of the unauthorised building; unauthorised structures in the Jewish areas are generally minor add-ons to buildings, such as balconies. Moreover, there is a disproportionate enforcement of the law against Palestinian structures. Only 20% of unauthorised building is in the Palestinian sector, yet 70% of demolitions are carried out there and a similar proportion of construction fines are imposed.

Israel's *de facto* annexation of East Jerusalem is internationally condemned; *a fortiori*, the transfusion of the Israeli legal system into East Jerusalem is illegal. Thus the intervention of international humanitarian law is in order. The administrative house demolitions which stem from Israel's housing policy constitute the destruction of real and personal property belonging to the protected persons under occupation and are not justified by military necessity or Israel's obligation to maintain safety and order, thus violating Article 23(g) and 43 of the Hague Regulations and Article 53 of the Fourth Geneva Convention. Moreover, considering the large scale of the demolitions this may even constitute a war crime.

Furthermore, despite the tension created by Article 43 of the Hague Regulations by the length of the occupation of East Jerusalem, it is argued that the duty to maintain public order and safety supersedes that of the duty to refrain from intervening with its laws, especially when considered in light of the original intent of the drafters who expressly considered "social functions and ordinary transactions which constitute daily life" to be included in the term "public order and safety". Hence, this actually creates a duty to implement urban plans to allow for the building of homes and other structures.

### Jerusalem Periphery

Clearly illegal policies are applied to yet another community at the Jerusalem periphery, where the Palestinian-Bedouins of Khan al Ahmar, a community constituted of 1948 refugees, face imminent displacement if the Israeli authorities

demolish their homes and school as planned for the coming weeks. This may very well destroy the community, one of 20 Bedouin communities in the area, who have become victims of settlement expansion and ethnic cleansing, in an attempt to forge continuity between Judaized East Jerusalem, Ma'ale Adumin, located with its 40,000 settlers in the center of the West Bank, and the settlements in the Jordan Valley.

The land on which the Khan al Ahmar community sits has been slated for the expansion of settlements in the Ma'ale Adumim municipal area, despite the community's presence there. Israeli authorities see Khan al Ahmar and the other Palestinian-Bedouin communities in the area, comprising more than 2,300 people, as "interfering" with the planned expansion of Ma'ale Adumim, Kfar Adumim and other surrounding settlements, and to the construction of the West Bank barrier. The Khan al Ahmar Jahalin school, established by the community, is the only school to provide primary education to children of the Arab al-Jahalin Bedouin tribe. Built in 2009, the eco-friendly school, made of used tires and mud bricks and providing education for over 70 students, is slated for demolition. The Israeli Supreme Court recently rejected a request by neighboring settlers of Kfar Adumim to close the school; however the petition has set the clock ticking for its demolition, which would effectively deny the children of the community their education and endanger their future.

If implemented, Israel's "development plans" would represent the consummation of years of settlement expansion at the expense of the Palestinian communities. Since 1991, when large parts of the communities' living areas were integrated into the expanded boundaries of Ma'ale Adumim, Israeli policies have increased the pressure on the communities to leave their homes and *de-facto* annex this strategically significant area to Israel, connecting it with the Jordan Valley and rendering a Palestinian state unviable, the freedoms and entitlements of Palestinians unheeded.

## Recommendations

- I. ICAHD calls for an end to the occupation of the Palestinian Territory, a realization of Palestinians right to self-determination, and an immediate ceasing of demolitions of Palestinian houses, schools and infrastructure, in accordance with international human rights law and international humanitarian law.
- II. ICAHD calls for the immediate transfer of powers and responsibilities related to the sphere of planning and zoning in the West Bank, including Area C, to Palestinian jurisdiction in accordance with international law and bi-lateral agreements, so as to allow for a nondiscriminatory planning system to include community participation in all levels of the planning process.
- III. ICAHD calls for all refugees and internally displaced persons whom have been forcibly displaced to be allowed to repatriate, to return to their homes in safety and dignity, and to be given compensation for any harm they have suffered, including the destruction of land, homes and property.
- IV. ICAHD calls for an immediate cease on house demolitions and forced evictions in Palestinian unrecognized villages and neighborhoods within Israel proper, and for their imperative recognition and facilitation of all services in an equitable form.
- V. ICAHD calls on the United Nations Committee on Economic, Social and Cultural Rights contracting parties to adopt these recommendations and register them in the CESCR concluding observations on the implementation of the Covenant.