

**Internal Displacement Monitoring Centre**

**Up-dated submission to the Universal Periodic Review Israel**

1. Israel, as the occupying power of the Palestinian territories, is bound by International Humanitarian Law. International human rights law also applies in the occupied Palestinian territory (oPt) due to Israel's effective jurisdiction over the territory<sup>1</sup>. Israel has the obligation to administer the occupied territory to the benefit of the local Palestinian population and needs to put in place the necessary regulatory and administrative measures to ensure the right to an adequate standard of living for people under its control,
2. Of particular concern since Israel's last Universal Periodic Review in 2009, are Israel's policies and practices, which individually and in combination, cause the forced displacement of Palestinians in oPt. Forced displacement occurs as a result of demolition of civilian property, forced evictions, land expropriation, the establishment and /or expansion of illegal Israeli settlements, construction of the Wall, movement and access restrictions, settler violence and military operations. Affecting both urban and rural communities, displacement negatively impacts on a range of fundamental human rights, including: freedom of movement and choice of residence; respect for privacy, the home and the family; health and education; and an adequate standard of living, including housing, water, food and development. Discrimination on ethnic, racial, national or religious grounds is at all times prohibited, as recalled by the Committee on the Elimination of Racial Discrimination of 9 March 2012 (cerd/c/isr/co/14-16). .
3. The military, and particularly the Israeli Civil Administration (ICA) which deals with all aspects of civilian life in areas under its control, has authority over planning and zoning. Israel's freeze on land registration procedures in the West Bank, introduced by military order in 1968, prevented the finalization of these registration procedures and prohibited future Palestinian land settlement. Therefore, nearly 70% of land in the West Bank remains unregistered in the Land Registry,<sup>1</sup> leaving the traditional owners/residents of the land vulnerable to confiscation or expropriation by the Israeli authorities. The lack of land registration makes it difficult for Palestinians to develop the land they occupy legally, as proof of registration is often required.

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<sup>1</sup> Order concerning Land and Water Settlement (Judea and Samaria) (No.291),1968; and Talia Sasson, (Interim) Opinion concerning Unauthorised Outposts, Jerusalem, February 2005, page 61.

4. Large parts of unregistered land have come under the control of Israel (as ‘state lands’) and continue to do so. Between 1967 and 2011, the percentage of land in oPt declared as ‘state land’ has more than doubled from 700,000 dunums (70,000 hectares) to over 1.4 million dunums. This resulted in a decrease in land available to Palestinian communities, while the majority of Israeli settlements in the West Bank– illegal under international law – are located on ‘state land’. A Freedom of Information request put to the Israeli Civil Administration governing the West Bank has revealed that since 1967 only 0.7% of ‘state land’ in the West Bank has been allocated to Palestinians.
5. Area C – the area under complete Israeli control<sup>2</sup> – constitutes 60% of the West Bank and is crucial for the development and territorial contiguity of the Palestinian state, as well as the Palestinians’ right to self-determination. However, Israeli policies resulted in the increased fragmentation of Palestinian land and are threatening the presence of approximately 150,000 Palestinians in Area C. Seventy percent of Area C has been allocated for settlements or other Israeli military and civilian purposes.<sup>3</sup> Of the remaining 30 percent of Area C, only one percent is in practice, available for Palestinian development; much of that one percent is already built-up.
6. In East Jerusalem, which Israel has unilaterally annexed and where it applies domestic law over the Palestinian residents in contravention of Article 2 (4) of the UN Charter, the UNGA R2625 (XXV) of 1970 and the UNSC R478 of 1980, the process for land registration is equally complicated and also requires proof of land ownership. For many Palestinians, ownership is insufficiently documented, leaving them vulnerable to losing their property if their claims are called into question during the verification process. Therefore, many Palestinians in East Jerusalem avoid registering their property. Additionally, the Jerusalem Municipality is implementing discriminatory zoning and planning policies so as maintain a “demographic balance”, as stated in official municipal planning policy documents.<sup>4</sup> The most recently proposed city master plan<sup>5</sup> calls for a 60% Israeli Jews to 40% Palestinians demographic balance and stresses the importance of maintaining a Jewish majority.<sup>6</sup> Just 13% of East Jerusalem is zoned for Palestinian construction; again,

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<sup>2</sup> Under the Oslo Agreements, a temporary land classification was made: in Area A the Palestinian Authorities have security and civilian control; in Area B Israel has security control and the Palestinian authorities control civil issues; and in Area C Israel has full control over civilian and security matters.

<sup>3</sup> Office for the Coordination of Humanitarian Affairs (OCHA), “Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank,” Special Focus, December 2009. There are some 120 settlements and 100 settlement outposts in Area C; some 20% of the land (often overlapping) is allocated to military zones and 10% to nature reserves.

<sup>4</sup> Talia Sasson, (Interim) Opinion concerning Unauthorised Outposts, Jerusalem, February 2005, note 1, paragraph 10.

<sup>5</sup> The so-called “Jerusalem 2000” plan.

<sup>6</sup> Bimkom, “Planning in Jerusalem: The Implications of the New Outline Plan of Jerusalem for Palestinian Neighbourhoods”, December 2009, p. 2.

much of this area has already been developed. In comparison, 35% of East Jerusalem is zoned for settlements.

7. The Absentee Property Law constitutes a further infringement of the right to secure tenure to land and property owned by Palestinians within Israel and in East Jerusalem. The law is used to deprive Palestinians of the use of, access to, and ownership of their land and property in areas under Israeli control. The Absentee Property Law allows for the transfer of property left behind by Palestinians after they fled or were deported during the 1948 War to the State of Israel. The law has been applied almost exclusively to Arab citizens and residents of Israel and Palestinians living in oPt, who under international humanitarian law, are protected persons.
8. Palestinian communities have no access to planning decisions that affect them directly. They are rarely consulted in the preparation of plans and face prohibitively expensive and bureaucratic procedures to object to plans already developed. For example, a community master plan prepared by the Palestinian residents of the Al-Bustan area in East Jerusalem in 2009 which would allow them to 'legitimise' and maintain their residential and livelihood structures, was rejected by the Jerusalem Municipality, which recommended its own plan for further consideration. The Municipality plan designates the area a site of historical and tourist interest and would result in the displacement of approximately 900 residents of the Al-Bustan area. Fifty-six of the 100 homes in Al Bustan are already subject to demolition orders, which will be implemented if the historic park plan is approved. The Municipality's plan was created without consultation with the Palestinians affected and they face continued uncertainty over what will happen to them.
9. Restrictive and discriminatory zoning and planning prevents Palestinians in Area C and East Jerusalem from obtaining permits to construct or rehabilitate homes, schools, animal shelters, or water collection systems. Permit application procedures are complex, expensive and rarely successful. The same planning regime facilitates Israeli settlement expansion in Area C and East Jerusalem. Settlers receive preferential treatment through the use of '*state land*', provision of infrastructure such as roads and water systems, high approval rates for permits and the establishment of Special Planning Committees comprised of settlers for consultative decision making processes. Settlers also come under Israeli domestic law. This discriminatory policy results in *de facto* confiscation of land and resources, and undermines the livelihood of Palestinian communities and their ability to develop.
10. In Area C, over 94% of applications for building permits submitted by Palestinians to the ICA between January 2000 and September 2007 were denied. Between January 2007 and December 2010, the permit delivery rate declined further to 4.4%,<sup>7</sup> exposing the vast majority of area C to displacement. In East Jerusalem, the

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<sup>7</sup> ICA Response to Bimkom Planners for Human Rights Freedom of Information Request: of the 1,426 permit applications submitted by Palestinians in Area C from 2007-2010; 106 were approved in principle (7.4%), but only

zoning and planning regime has precipitated the housing crisis for Palestinians, with at least 32% of Palestinian homes built in contravention of the unlawful Israeli zoning regime, resulting in some 93,000 people at risk of forced displacement because they are unable to obtain building permits.

11. Palestinians who build without Israeli-issued permits live under the constant threat of demolitions and displacement, which often take place. The demolition of private property is generally illegal under international law, except in very specific circumstances of military necessity as defined by IHL. The ICA prioritizes the demolitions in selected areas that serve to advance broader Israeli policies, many of which are in contravention of international law, based on. These include policies related to proximity to settlements, the separation Wall, location on 'state land',<sup>8</sup> or major roads/infrastructure often serving only Israelis.<sup>9</sup> Over 60% of the Palestinian-owned structures demolished in 2011 were located in areas allocated to settlements.<sup>10</sup>
12. An example relating to the Wall is Cremisan Valley where the Israeli authorities are confiscating land for Wall construction through land seizure orders issued in 2006. Most of Cremisan, which includes a Silesian convent and school, is located in Area C, but parts lie within the Jerusalem municipal boundaries. The planned route of the Wall would be built on Cremisan's agricultural land, disconnecting the land from the school and the convent, resulting in agricultural losses and access restrictions. In 2010, the Silesian Sisters sought legal assistance to challenge the construction of the Wall and to demand the rerouting of the Wall so as not to deny access to basic services (education) nor livelihoods (agriculture). In October 2011, the ICA issued new seizure orders to the convent and other landowners in the area to construct the Wall in a way which will disconnect the convent from most of its agricultural land – supposedly because it is the less damaging option. An appeal to the Israeli Special Appeals Committee against this route for land seizure in time of emergency was rejected in April 2013. Previous appeals against the route of the wall have also been unsuccessful, in fact despite numerous appeals the route of the wall has only been altered very slightly, despite the fact that its construction has sharply increased Palestinian's risks of displacement. In its 2004 advisory opinion on the Wall, the International Court of Justice ruled that the route of the Wall, so long as it penetrates the West Bank, is illegal under international law.
13. Demolitions and subsequent forced displacement continue to occur at a worrying rate. In 2012, 604 Palestinian-owned structures were demolished in the West Bank,

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64 were actually granted (4.4 %). This follows previous trends from 2000 to 2007 when less than six percent of applications were accepted.

<sup>8</sup> Israel considers that *state lands* in the West Bank are all lands that are not categorized as private. For the ICA, there are two main categories of private lands: plots of land which have been formally registered by their owners before Israel halted the land registry process in 1967 and plots that have been continuously cultivated by their owners, establishing a status of legally-recognized *de facto* ownership.

<sup>9</sup> HCJ 5377/09 Regavim v the Minister of Defence, Military Commander and the Head of the Civil Administration.

<sup>10</sup> OCHA, Demolitions and Forced Displacement in the Occupied West Bank, January 2012.

including East Jerusalem, resulting in the displacement of 886 people. The livelihoods of 4,100 others were adversely affected by demolitions in 2012.<sup>11</sup> In 2011, 1,233 Palestinians were forcibly displaced (139 as a direct result of settler violence and 1,094 because of demolitions); more than half of these were children.<sup>12</sup> Demolitions in 2013 continue apace: by mid-September, 521 structures were demolished, and 862 Palestinians were forcibly displaced.<sup>13</sup>

14. Approximately 89 percent of demolitions in 2012 occurred in already vulnerable farming and herding communities in Area C who live in very basic structures (tents, tin shelters), and have little or no service infrastructure.<sup>14</sup> Bedouin and herding communities, who have often experienced multiple displacement in the past, are disproportionately targeted.
15. Demolitions in East Jerusalem resumed in the last quarter of 2011. This overturns a ‘freeze’ since 2010 by the Jerusalem Municipality, which was generally assumed to be the result of international pressure not to jeopardize the political balance in Jerusalem. In 2012, 64 structures in East Jerusalem were demolished.<sup>15</sup> Of these, 15 were self-demolitions carried out by Palestinian families that had received demolition orders from Israeli authorities.<sup>16</sup> One of the reasons for self-demolitions is that people are unable to pay high fines imposed for building without a permit.
16. While demolitions are probably the most direct cause of displacement, there is an intricate set of triggers at play. Usually, people suffering from demolitions also have difficulties accessing basic services, live in substandard housing, see their movements restricted, have difficulties making a livelihood, and suffer from settler or military harassment. For example, the permit regime instituted by Israeli authorities requires Palestinians to obtain permits from the Israeli army to enter certain areas of oPt, which have been declared off-limits to them. These areas include almost 95% of the Jordan Valley, the ‘Seam Zone’ area between the Wall and the 1949 Armistice ‘Green Line’, and all of the settlement areas and land reserved for settlement construction. Only Palestinians who are able to prove permanent residency in these areas can obtain permits allowing them to continue to access their own homes and land. The permit regime is non-transparent, arbitrary and bureaucratic, requiring multiple applications for continued access, while applications are not always successful. While Israel has increased the land subject to the regime in the Seam Zone by 30% between 2007 and 2011, there has been an 87% decrease in the number of permits issued.<sup>17</sup> In April 2011, the Israeli High Court

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<sup>11</sup> Displacement Working Group oPt, Demolition Summary Table 2012.

<sup>12</sup> Displacement Working Group oPt, Demolition Summary Table 2011.

<sup>13</sup> Displacement Working Group oPt, Demolition Summary Table 12 September 2013.

<sup>14</sup> OCHA, Fragmented Lives Humanitarian Overview 2012, May 2013, p. 27.

<sup>15</sup> Displacement Working Group oPt, Demolition Summary Table 2012.

<sup>16</sup> ICAHD, Forced evictions, demolitions and displacement in the West Bank in 2012,

<http://www.icahd.org/node/473#sthash.nCmWakOg.Ym1mRHca.dpuf>

<sup>17</sup> HCJ 9961/03 HaMoked: Center for the Defence of the Individual et al. v. Government of Israel et al. (published in “Nevo”, 5.4.2011). Figures cited by the Government of Israel in their response to the petition.

rejected a legal challenge against the legality of the permit regime, effectively upholding this discriminatory system,<sup>18</sup> which violates many Palestinians' basic human rights. This regime has resulted in an increasing number of Palestinians being unable to access their homes and lands, effectively displacing them from these areas.

17. The impact of displacement cannot be overestimated; it results in increased poverty, as people are deprived of their main source of physical and economic security and negatively affects their livelihoods. In many cases, it also further reduces their access to basic services (water, electricity, healthcare, education). Displacement has negative psychosocial consequences, increasing anxiety and stress among communities and within households.
18. Particularly vulnerable are the Bedouin and herding communities, the majority of whom live on 'state land', placing them at constant risk of forced displacement, but also of becoming subject to 'relocation' by the Israeli authorities through a non-consultative process.
19. Since July 2011, the ICA has become more vocal about its intentions to forcibly relocate Bedouin and herding communities in Area C (up to 50,000), starting with 23 communities (2,300 people) in the strategically important eastern periphery of Jerusalem. These 23 communities of the Jahalin Bedouin tribe, originally from the Negev and displaced several times since, mostly live in the planned expansion area of Ma'ale Adumim settlement. This includes the so-called "E1 area", which aims to create an Israeli urban continuum between Ma'ale Adumim and East Jerusalem, while also linking up smaller settlements. E1, which has remained largely unimplemented due to political pressure, would disrupt the territorial contiguity of the West Bank and make expansion of East Jerusalem impossible –endangering the viability of the Palestinian state. All 23 communities have experienced increased pressure on their lives and livelihoods, including repeat demolitions, settler violence, access restrictions and disruption of basic services. In 2012, the ICA started informing the communities of their need to "relocate". Members of the same communities have been forcibly evicted from their homes in the late 1990s and were forced to live in a semi-urban setting close the Jerusalem Municipality garbage dump, resulting in a loss of their traditional Bedouin lifestyle, with devastating consequences to their social fabric.<sup>19</sup> At the time of writing, Israel plans to forcibly move at least some of the 23 communities to Nuweima, a site near of Jericho and some additional communities to the original site at the garbage dump. Nuweima is already home to the Rashayda Bedouin tribe, and the proposed ICA plan will limit the development of the community already there and crowd the area with other communities. This violates the communities' cultural rights, which includes the need to respect, protect and prevent the degradation of their particular way of life,

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<sup>18</sup> HaMoked: Center for the Defence of the Individual. "High Court Approval of West Bank 'Permit Regime' – A Green Light to Expulsion of Palestinians from their Lands" Press Release, 5 April 2011.

<sup>19</sup> UNRWA and Bimkom, A Study on the Transfer of Bedouin Palestine Refugees, May 2013.

including their means of subsistence, the loss of their natural resources and their cultural identity as set out in ILO Convention 169.

20. The pressure on the communities increases their vulnerability. This coupled with a lack of respect for the communities' wishes to return to the Negev or develop in their current location raise concerns about forced transfer and of the communities'. At no time where these communities' views taken into account nor were they allowed to make a free and informed choice about their future. An indication might be that, regarding one of the schools<sup>20</sup> in that area at risk of demolition (Khan al-Ahmar school), then-Israeli Minister of Defence responded in April 2012 to the Israeli High Court noting that he "...decided to move the school from its current location to another one... and to implement the relocation during the next upcoming months."<sup>21</sup>
21. Whilst demolitions can be stayed through legal petitions to obtain temporary court-ordered injunctions, recent developments have indicated that even such legal protection is in jeopardy, for example through legal procedures by settlers attempting to hasten displacement of Palestinians in East Jerusalem and Area C, including the above-mentioned school. Most notable is the Regavim settler organization's request of December 2011 to be recognized as *amicus curiae*<sup>22</sup> regarding 162 pending Palestinian demolition cases. The petition alleged that the High Court was deficient in responding to outstanding petitions relating to the enforcement of demolition orders in Area C. In a response, the Attorney-General declared that his office will file the State's replies to these cases to the High Court, "in accordance with the priorities of the competent parties"<sup>23</sup> by 8 August 2012. The Attorney-General stated that for new cases lengthy adjournments will no longer be requested, instead priority cases will be listed – presumably for demolition within a reduced timeframe.
22. Legal assistance providers have noted with concern a reduction in the time provided by the ICA in which to object to demolition and eviction orders to three days or less. One example is Khan al-Ahmar Kurshan (a Bedouin community in the eastern Jerusalem periphery) where people were given 24 hours to leave their homes. Further, due to additional resources given to the ICA, the legal process is speeded up and rejections issued more rapidly. These policies seem to prevent people's access to justice, as lawyers do not have sufficient time to prepare their legal

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<sup>20</sup> Palestinian children do not fully enjoy access to an adequate standard of education or a protected educational environment for various reasons, including the difficulty of obtaining building permits from the ICA for the construction, expansion or rehabilitation of schools, resulting in sub-standard school infrastructure and a chronic shortage of classrooms. Restrictions on access and movement, exacerbated since the construction of the Wall, constitute another major factor. Incidents of violence perpetrated by settlers and the Israeli military against children and educational staff are regular occurrences.

<sup>21</sup> Appeal 5665/11, Message from the Minister of Defence to the High Court of Justice regarding Khan al-Ahmar school, 18 April 2012.

<sup>22</sup> Friend of the court.

<sup>23</sup> These are the priorities of the ICA for demolitions of Palestinian structures in Area C, as outlined in response to an earlier Regavim petition (HCJ 5377/09 Regavim v the Minister of Defence, Military Commander and the Head of the Civil Administration).

interventions. The shortened timeframes also raise questions about whether adequate time is allocated for the ICA to review the cases in sufficient detail.

23. The above clearly shows that many basic rights of the Palestinians, as protected people of an occupied territory, are systematically being violated. Zoning and planning are a major contributor to these violations leading to forced displacement. Therefore, Israel should transfer planning authorities to a civilian, Palestinian body that ensures fair and equal access, genuine consultation, participation and representation from Palestinian communities in Area C and East Jerusalem. Until this transfer happens, Israel should immediately cease demolitions of Palestinian property and the issuance of demolitions orders, while canceling current orders affecting homes, livelihood structures, and public infrastructure (schools, water cisterns, electrical networks), or agricultural land. Israel should cease construction of Jewish settlements, national parks, and the Wall in oPt. Israel should ensure fair and equal access to legal remedy for Palestinians.

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<sup>1</sup> In 1967, the Israeli army invaded the Palestinian territory and gained effective control over it. Since then, the West bank - including East Jerusalem - and the Gaza Strip constitute occupied territory.

The International Committee of the Red Cross (ICRC) has stated that the occupied Palestinian territory (oPt) is a territory under occupation. In its Advisory Opinion from July 2004, the International Court of Justice (ICJ) reaffirmed that the oPt is a territory under occupation. The laws applicable to the oPt are the laws of belligerent (hostile) occupation, which are part of international humanitarian law (IHL). These laws are binding on Israel according to the international community.