



AL - HAQ

Designing and Implementing Effective Human Rights-Based Housing Strategies: the Case of the Occupied Palestinian Territory

Al-Haq submission to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this regard, Leilani Farha

Al-Haq has special consultative status with the United Nations Economic and Social Council.

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1. Al-Haq welcomes the opportunity to submit to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, for the mandate's next thematic report on "designing and implementing effective human rights-based housing strategies." The occupied Palestinian territory (OPT) provides ample examples of the impact on individuals and communities when a State's, or in the case of Palestine- an Occupying Power's, strategy aims to legally and practically make the right to housing nearly impossible to attain. Through either manipulating or disregarding the primary elements of a human-rights based housing strategy within the OPT, including: proper legislation, meaningful engagement with the community, clear and impartial responsibilities of State, including Third States, and non-State actors, and effective and independent accountability mechanisms, the example of occupied Palestine demonstrates why such elements are crucial to realizing the right to housing.

3. **Planning:** A human rights-based housing strategy should be implemented through unbiased legislation. Such legislation, and subsequent practices related to it, should conform to international human rights law.

4. Israel, as Occupying Power, is bound by international humanitarian law and international human rights law when administering the OPT (the West Bank, including East Jerusalem, and the Gaza Strip). Rather than ensure the right to adequate housing for the protected Palestinian population, the planning regimes implemented by Israel in Area C (which amounts to 60% of the West Bank) and East Jerusalem endeavor to serve Israel's land annexation and demographic goals, including by creating a coercive environment to force the transfer of Palestinians from the territory.

5. Shortly after the start of the occupation, Israel amended the planning law previously in place in the OPT by military order, ending Palestinian representation in planning bodies.¹ Paradoxically, while Palestinians are both kept out of the planning process and their basic needs are overlooked, Israeli settlers, unlawfully living in the OPT, participate in planning for settlements. Israel has established a discriminatory, unlawful planning regime in Area C where only 1% of land is planned for Palestinian development and nearly 70% is within the boundaries of settlement regional councils.² Because the ICA has not instituted outline plans for the majority of Palestinian areas, including by moving forward with plans submitted by communities themselves, a grounds is created to reject virtually all permit applications submitted by Palestinians.³ Palestinians are then compelled to either build or renovate "illegally" and face demolition, relocate, or live in inadequate housing. Appealing demolition orders often lead to protracted processes, which financially burden Palestinians and rarely lead to an outcome where residents remain in their homes.

7. Areas A and B, constituting approximately 40% of the West Bank, are non-contiguous communities surrounded by Area C. Any natural growth of these areas, which include major

¹ In 1971, Israeli Military Order 418 amended the Jordanian enacted "City, Village, and Building Planning Law."

² Area C of the West Bank: Key Humanitarian Concerns, Update August 2014, OCHA, available at https://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_august_2014_english.pdf

³ It has been estimated that only 1.5% of permit applications were accepted between 2010 and 2014. Under Threat: Demolition Orders in Area C of the West Bank, UN OCHA, September 2015, available at http://data.ochaopt.org/demolition/demolition_orders_in_area_c_of_the_west_bank_en.pdf

Palestinian cities, would inevitably enter into Area C. Rather than be able to use natural land reserves for growth in Area C, Palestinians are forced to build upwards.

8. Although part of the West Bank, Israel's illegal annexation of East Jerusalem in 1967 included the implementation of Israeli laws on the city. Irrespective of the separate legal system from the rest of the West Bank, East Jerusalem residents are faced with a similar discriminatory planning regime which serves Israel's stated aim of a demographic balance of 60% Israeli Jews to 40% Palestinians in the city. Accordingly, "only 13% of East Jerusalem is zoned for Palestinian construction, much of which is already built-up,"⁴ and outline plans for Palestinian neighborhoods in East Jerusalem have not moved forward in relevant Israeli authorities in over a decade.⁵ As in Area C, permits for construction are nearly impossible to attain; it is estimated that 33% of Palestinian homes in East Jerusalem are without a permit and under threat of demolition.

On 17 October 2017, Israeli Occupying Forces demolished the homes of Omar Abu Rajab and that of his son's family in the Wadi Yasul neighborhood of Silwan, East Jerusalem. The demolition caused the displacement of 9 individuals, including 5 children. The pretext for the demolition was that Abu Rajab did not have a permit to build. Israeli authorities had declared the neighborhood as part of a "green area;" further, while a local outline plan had been submitted by residents, Israeli authorities have neither accepted nor rejected the proposal. The land's designation as a green area, coupled with the lack of an outline plan, make receiving a permit for building nearly impossible.

Palestinian citizens of Israel, including urban and Bedouin communities, face a similar discriminatory and bias planning regime.⁶

10. **Demolitions:** The right to adequate housing includes the right to live in security. Accordingly, the promotion of the right to housing by States may "only require the abstention by the Government from certain practices."⁷ This is exemplified in Israel's practice of administrative and punitive home demolitions which emanate from its discriminatory targeting of Palestinians.

6. The area of the Jordan Valley in the West Bank provides a stark example of how the planning regime and resultant demolitions not only impact Palestinian's individually, but also as a society. The Jordan Valley, nearly 90% of which is Area C, contains the majority of Palestinian natural resources and is vital for a future independent Palestinian state. Rather than foster Palestinian presence as occupying power, Israel repeatedly reaffirms its intent⁸ to maintain control over the area while targeting Palestinian communities there, including by demolishing donor-funded structures. The community of Khirbet Tana in the Jordan Valley was repeatedly targeted in 2016, with Israel also demolishing structures that had been provided in relief efforts by donors after other demolitions.⁹ From January 1- October 23, 2017, Al-Haq recorded 105 demolitions in Area

⁴ East Jerusalem: Key Humanitarian Concerns, Update December 2012, available at

https://www.ochaopt.org/sites/default/files/ocha_opt_Jerusalem_FactSheet_December_2012_english.pdf

⁵ East Jerusalem Facts and Figures 2017, Association for Civil Rights in Israel, available at <http://www.acri.org.il/en/wp-content/uploads/2017/05/2017-EJ-selected-facts-EN-with-design.pdf>

⁶ See for example: One Policy Targeting One People, Al-Haq, 19 January 2017, available at

<http://www.alhaq.org/advocacy/topics/population-transfer-and-residency-right/1094-one-policy-targeting-one-people>

⁷ CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), para. 10

⁸ Netanyahu: If We are Not in the Jordan Valley, Iran will be, 20 October 2017, Jerusalem Post, <http://www.jpost.com/Arab-Israeli-Conflict/Netanyahu-If-we-are-not-in-the-Jordan-Valley-Iran-will-be-507932>

⁹ UN Humanitarian Coordinator visits Palestinian community of Khirbet Tana and warns of risk of forcible transfer', 28 March 2016, OCHA, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/D406397E7F6EC90585257F85004B87B0>

C, which displaced 354 individuals, including 223 children.¹⁰ Of these, 42 demolitions took place in the Jordan Valley, and displaced 119 individuals, including 58 children.

10. Alongside administrative home demolitions, Israel also revived its practice of punitive home demolitions. The policy was reaffirmed by the Israeli security cabinet in 2015, and called for the demolition of the homes of alleged attackers, and prohibited construction on the site where a home was demolished.¹¹ Notably, Israel punitively demolishes the homes of alleged perpetrators even when they have been killed at the scene of an incident, effectively only targeting the families. Since 2014 until 1 September 2017, 62 homes have been punitively demolished.¹² Out of these, 25 homes were demolished after the alleged attacker was killed at the scene.

Conclusion and Recommendations:

12. Israel's planning regime in the occupied Palestinian territory undermines the right to housing for Palestinians, and more broadly "the right to live in security, peace and dignity."¹³ Structural discrimination is coupled with the absence of effective domestic remedies, perpetuating the status quo. In effect, Israel's administration of the OPT serves as a primary example of how to violate the right to adequate housing of an entire population. At the same time, it implicitly highlights the potential and necessity of an inclusive, representative, non-discriminatory planning system.

13. Further, while Israel, is primary duty bearer in the OPT, questions regarding the role of the international community should also be raised. As recognized by the CESCR General Comment No. 4: The Right to Adequate Housing, international assistance towards housing or human settlements often "does little to address the housing needs of disadvantaged groups."¹⁴ In the case of the OPT, international donor funding often serves to either work within Israel's illegitimate planning regime in the OPT or merely serves to offer relief assistance to affected Palestinians rather than address the root of the problem. Third States can take further action to uphold obligations under the Fourth Geneva Convention, including ensuring that Israel does not violate prohibitions against the destruction and appropriation of property.

14. Accordingly, in the absence of an equitable housing strategy or domestic remedies available to marginalized populations, donor agencies, organizations, and Third States should:

- ensure that their work serves to incorporate the wishes of marginalized populations, through meaningful consultations;
- avoid implicitly facilitating or cooperating with unlawful policies and practices implemented by governing authorities;
- require compensation for projects which are demolished or confiscated by State authorities in an effort to obstruct the right to adequate housing of a targeted group; and
- take all other measures available to them to positively affirm their commitment to the right to adequate housing, and ensure accountability for violations of international law.

¹⁰ Information provided by Al-Haq's Monitoring and Documentation Department on 24 October 2017.

¹¹ Security Cabinet approves anti-terror measures, Israeli Ministry of Foreign Affairs, 13 October 2015, available at <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Security-Cabinet-approves-anti-terror-measures-13-Oct-2015.aspx>

¹² Information provided by Al-Haq's Monitoring and Documentation Department on 24 October 2017.

¹³ General Comment 4 affirms that the right to housing should not be narrowly interpreted to equate to the right to merely having a roof over one's head. (See Paragraph 7 of the General Comment.)

¹⁴ Id. at para. 19