

مجلس منظمات حقوق الإنسان الفلسطينية
Palestinian Human Rights Organizations Council



PHROC Raises Serious Concerns Regarding the Development of Master Plans Requiring Israeli Approval in Area C of the West Bank



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The Palestinian Human Rights Organisations Council (PHROC) calls on all third States and the State of Palestine to carry out thorough risk assessments before funding or facilitating the development of Master Plans in Area C that require prior Israeli approval. By basing the development of these Master Plans on Israeli Civil Administration (ICA) approval, donors are implicitly recognising Israel's unlawful planning regime in Area C and risk furthering the associated violations of international law, including the construction and expansion of settlements, the destruction of Palestinian property, the forcible transfer of Palestinian residents, the violation of various human rights obligations and the acquisition of territory through the use of force.

Master Plans in Area C

As per the 1995 Oslo II Accord (Oslo), the West Bank was divided into Areas A, B and C – the latter covering 59 per cent of the area of the West Bank. Area C, with its fertile agricultural lands, water resources, minerals, mud and land reserves available for the natural expansion of the Palestinian population, is considered essential for the development of the Palestinian State. Under the terms of Oslo, however, Area C is under full Israeli control with regards to security, planning and construction.

Under Israeli control, less than one per cent of Area C has been assigned for Palestinian construction - much of which is already built-up. Israel has designated seventy per cent of Area C as falling into the following categories, in which Palestinian construction is effectively prohibited: closed military zones, "state land", nature reserves, the Annexation Wall "buffer zone" and land reserved for the construction and expansion of Israeli settlements, which are illegal under international law.¹ In the remaining 29 per cent,

1 UN OCHA Special Focus, 'Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank' (December 2009) <http://www.ochaopt.org/documents/special_focus_area_c_demolitions_december_2009.pdf> accessed 16 October 2014, 5-6.



Palestinian construction is heavily restricted.² This is largely due to a lack of detailed plans for Palestinian villages, the restrictive manner in which the ICA interprets the out-dated plans that do exist and the difficulty some Palestinians face proving ownership of the land on which they plan to build.³ The restrictions placed on Palestinian development in Area C is illustrated by the fact that in recent years the Israeli authorities have rejected approximately 94 per cent of all Palestinian construction permit requests across Area C and East Jerusalem.⁴

As a result, in order to meet their immediate needs, Palestinian families are regularly forced to build houses and other infrastructure without the necessary Israeli permits. These structures are left vulnerable to demolition by the ICA. Between the beginning of January and mid-September 2014, 396 Palestinian structures were demolished in Area C by the Israeli authorities, leading to the displacement of 769 people.⁵ In total throughout 2013, 565 Palestinian structures were demolished in Area C, causing the displacement of 805 people.⁶ Since 1993, when the Oslo process began, over 15,000 Palestinian structures have been demolished across the OPT.⁷

Because of the severe restrictions on Palestinian construction in Area C and the frequent demolitions carried out by the Israeli authorities - including demolitions of donor-funded projects - many European donors have become reluctant to fund construction therein without the presence of ICA-approved Master Plans and building permits.⁸ Consequently, in recent years the international donor community has pushed for the development

2 UN OCHA, 'Area C of the West Bank: Key Humanitarian Concerns' (January 2013) <http://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_january_2013_english.pdf> accessed 14 October 2014, 1.

3 UN OCHA Special Focus, (n 1), 6.

4 The Israeli Committee Against House Demolitions, 'The Judaization of Palestine: 2011 Displacement Trends' (2011) <[http://www.icahd.org/sites/default/files/The%20Judaization%20of%20Palestine%20\(2\)_1.pdf](http://www.icahd.org/sites/default/files/The%20Judaization%20of%20Palestine%20(2)_1.pdf)> accessed 10 October 2014, 12.

5 UN OCHA Weekly Report, 'Protection of Civilians' (9-15 September 2014) <http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_9_19_english.pdf> accessed 16 October 2014, 2.

6 Ibid.

7 Oxfam, '20 Facts: 20 Years Since the Oslo Accords' (September 2013) <<http://www.oxfam.org/sites/www.oxfam.org/files/oxfam-oslo-20-factsheet.pdf>> accessed 12 October 2014, 1.

8 Association of International Development Agencies (AIDA), (27 May 2013) <http://www.oxfam.org/sites/www.oxfam.org/files/aida_eu_public_report_final_web_corrected.pdf> accessed 16 October 2014, 7.



of Master Plans. In May 2012, the EU Foreign Affairs Council called upon Israel to meet its obligations towards the occupied Palestinian people “by accelerat[ing] [the] approval of Palestinian master plans, halting forced transfer of population and demolition of Palestinian housing and infrastructure”.⁹ Following this call, the EU granted approximately 1 million Euros to support the development of Master Plans.¹⁰

However, an initial assessment indicates that the criteria and process for the development of donor-funded Master Plans is problematic and closely mirrors that of “Special Partial Outline Plans”, which were devised by the ICA in the 1990s. The Special Partial Outline Plans have not only failed to meet the needs of Palestinian communities but have also worsened the planning situation in some villages.¹¹ As with Special Partial Outline Plans, donor-funded Master Plans will ultimately be subject to ICA approval and thus based on ICA priorities.

After the Palestinian Authority (PA) Ministry of Local Governance has supervised Palestinian communities in the development of the donor-funded Master Plans, the plans are submitted to the ICA for approval. The ICA Higher Planning Council (HPC) is part of the Coordinator of Government Activities in the Territories (COGAT),¹² which is responsible for residential zoning and infrastructure in the West Bank and for addressing the needs of Israeli settlements, which are illegal under international law.¹³ As such, the HPC, as a component of COGAT, must both consider proposed Master Plans for Palestinian communities in Area C and protect the interests of Israeli settlements, including their expansion and further construction. The dual role played by the HPC, combined with the inherently discriminatory nature of the Israeli planning regime elaborated on below, effectively ensures that Master Plans are not issued or approved in accordance with the rights of

9 Council of the European Union, ‘Council conclusions on the Middle East Peace Process’ 3166th Foreign Affairs Council meeting (Brussels, 14 May 2012) <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dplc/dv/council-conclusion_/council-conclusion_en.pdf> paragraph 6.

10 AIDA (n 8), 10.

11 UN OCHA Special Focus (n 1), 9.

12 AIDA (n 8), 12, footnotes 17 and 18.

13 Coordinator of Government Activities in the Territories (COGAT), ‘About Us’ <<http://www.cogat.idf.il/896-en/IDFG.aspx>> accessed 16 October 2014.



the Palestinian people but instead serve the interests of settlers and the settlement enterprise.

The Illegality of Israel's Discriminatory Planning Regime in Area C

i. Israel's Obligations under International Law

Israel's discriminatory planning regime in and of itself violates a number of its obligations under international law. As the Occupying Power, Israel must abide by its obligations under international humanitarian law (IHL), which are set out primarily in the Regulations Annexed to the 1907 Hague Convention respecting the Laws and Customs of War on Land (Hague Regulations) and the Fourth Geneva Convention of 1949, both largely reflective of customary international law (CIL).¹⁴ In addition, the applicability of Israel's obligations under international human rights law (IHRL) to the Occupied Palestinian Territory (OPT) has been confirmed by the International Court of Justice 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*.

IHL stipulates that the Occupying Power does not gain sovereignty over the occupied territory and as such must abide by the general rule of maintaining the status quo ante.¹⁵ To this end, according to Article 43 of the Hague Regulations, reflective of CIL, Israel is obligated to respect, unless absolutely prevented, the laws in force prior to the occupation. Article 64(2) of the Fourth Geneva Convention, generally considered to be applicable to penal laws, provides an exception to this general rule, stating that:

“[t]he Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and

¹⁴ While Israel has accepted the applicability of the Hague Regulations on the basis of their customary nature, it has declared that it will only abide by the 'humanitarian provisions' of the Fourth Geneva Convention, although it has refused to specify which provisions it regards as humanitarian. For a recent judgment see HCJ 2690/09, *Yesh Din et al. v Commander of the IDF Forces in the West Bank et al.*, (Judgment, 23 March 2010).

¹⁵ International Committee of the Red Cross (ICRC), 'Occupation and international humanitarian law: questions and answers' (4 August 2004) <<https://www.icrc.org/eng/resources/documents/misc/634kfc.htm>> accessed 13 October 2014.



to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them”.

As the Occupying Power, Israel can only deviate from the laws in force prior to the occupation for the reasons listed in Article 64(2) above. “Under no circumstances may Israel administer the occupied territory to benefit its own interests”.¹⁶ In fact, Israel has a general obligation as an Occupying Power to administer the occupied territory in the interests of the occupied population.¹⁷

ii. Israel’s Illegal Planning Regime

In 1971, Israel issued Military Order 418, which significantly modified the Jordanian planning law then applicable to the West Bank by transferring full authority over planning to the Israeli Military Commander.¹⁸ By centralising planning powers with the ICA, the same military order ensured that Palestinians do not participate in the planning process.¹⁹

Prior to Military Order 418, a planning system already existed under Jordanian law including a High Planning Council, District Planning Committees and Local Planning Committees. This system issued building permits and approved plans with Palestinian participation throughout the decision-making process. Military Order 418, however, annulled the planning committees in place under Jordanian law and transferred their

16 Al-Haq, 'Water for One People Only Discriminatory Access and Water Apartheid in the OPT' (2013) <<http://www.alhaq.org/publications/publications-index/item/water-for-one-people-only-discriminatory-access-and-water-apartheid-in-the-opt>> accessed 11 October 2014, 69-70 referring to *United States of America v A. Krupp et al.*, US Military Tribunal at Nuremberg (Judgment, 31 July 1948), in *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. IX, 1342-1343. See further, A Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' in E Playfair (ed.), *International Law and the Administration of the Occupied Territories* (Clarendon Press, Oxford, 1992), 422; C Greenwood, 'The Administration of Occupied Territory' in E Playfair (ed.), *International Law and the Administration of the Occupied Territories* (Clarendon Press, Oxford, 1992) 247.

17 Report of the Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory, International Committee of the Red Cross (March 2012) <<https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>> 56.

18 Diakonia, 'Planning to Fail, The Planning Regime in Area C of the West Bank: An International Law Perspective' (September 2013) <<http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/planning-to-fail.pdf>> accessed 15 October 2014, 11.

19 UN OCHA Special Focus (n 1), 2.



functions to the ICA.²⁰ The military order further removed Palestinian ownership over and participation in the process and prepared the legal infrastructure to allow for separate planning regimes for Palestinians and Israeli settlers.

As provided above, the HPC responsible for Palestinian residential zoning and infrastructure in the West Bank is also responsible for addressing the needs of Israeli settlements. In 2009, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) revealed that the ICA had approved detailed plans for almost all settlements and that, whereas Palestinians have been excluded from participating in the planning process per Military Order 418, settlers are allowed to fully participate in planning activities.²¹ For example, settlers are responsible for licensing and inspecting building activities in settler communities.²² Furthermore, Military Order 418 allowed the Israeli Military Commander to appoint Special Local Planning Committees for almost all settlements. These Committees are authorised to issue building permits in line with ICA plans and are responsible for enforcement in settlement areas. The ICA has also established a sub-settlement committee responsible for planning in Israeli settlements.²³

The implementation of Military Order 418 has seen a stark difference within Israel's planning regime between the participation of settlers, whose presence in the West Bank is illegal under international law, versus the participation of Palestinians. In this regard, the ICA clearly prioritises the interests of Israeli settlers – illustrated by the fact that, in contrast to Palestinian communities, illegal settlements in Area C have detailed modern plans, including public spaces, parks, etc.²⁴ Israel's planning regime has facilitated the expansion and development of its illegal settlement enterprise while imposing extensive building restrictions on Palestinian

20 Diakonia (n 18), 14.

21 UN OCHA Special Focus (n 1), 3.

22 Ibid. 11.

23 Ibid.

24 B'tselem, 'Acting the Landlord: Israel's Policy in Area C, the West Bank' (June 2013) <http://www.btselem.org/download/201306_area_c_report_eng.pdf> accessed 9 October 2014, 24.



communities.²⁵ In this regard, it is abundantly clear that the Israeli planning regime is not in the interests of the occupied Palestinian population – a fact that is conclusively illustrated by Israel’s denial of 94 per cent of building permit applications submitted by Palestinians.

Furthermore, the alteration of the Jordanian planning law to make way for Military Order 418 cannot be considered in line with IHL. Indeed, it cannot be derived from Article 64 of the Fourth Geneva Convention or Article 43 of the Hague Regulations that the Occupying Power may deviate from its obligation to respect the laws in place before the occupation in order to accommodate its own violations of IHL. This includes the prohibitions against Israel transferring parts of its own population into the occupied territory and the demolition of private Palestinian property – both of which are instrumental in sustaining and expanding the Israeli settlement enterprise.

Corollary Violations of International Law Associated with Israel’s Illegal Planning Regime

i. Destruction and Confiscation of Private Property

As mentioned above, in order to meet their immediate needs of natural expansion, the Palestinian population is forced to construct in Area C without Israeli permits. As a consequence, these homes are under threat of demolition.

Israel’s practice of demolishing Palestinian structures in Area C violates Article 46 of the Hague Regulations, which prohibits the confiscation of private property, and Article 53 of the Fourth Geneva Convention, which prohibits the destruction of personal property by the Occupying Power except where such destruction is rendered absolutely necessary by military operations, whilst taking into consideration the welfare of the occupied population.²⁶ In this respect, while military necessity may in some instances

25 Bimkom, ‘The Prohibited Zone, Israeli Planning Policy in the Palestinian Villages in Area C’ (June 2008), <<http://bimkom.org/eng/wp-content/uploads/ProhibitedZone.pdf>> accessed 16 October 2014, 39.

26 Y Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law and its Interaction with International Human Rights Law*, (Martinus Nijhoff Publishers, Leiden and Boston, 2009) 170.



justify intervention with regards to private property, the striking of this careful balance “should never result in total disregard for the interests and needs of the population.”²⁷The prohibition against transferring the Occupying Power’s own civilian population into the occupied territory set out in Article 49(6) of the Fourth Geneva Convention contains no exception for security considerations and therefore does not render settlements a valid security measure.²⁸ Furthermore, the establishment of illegal settlements on seized Palestinian land clearly disregards the obligation to administer the occupied territory in the interests of the occupied population.

The development of donor-funded Master Plans requiring ICA approval risks implicitly “legitimising” ICA demolitions of Palestinian structures located outside the boundaries of the plans. As such, while the Master Plans may provide protection to the Palestinian communities that they include, they concurrently risk rendering those Palestinians not included in the plans increasingly vulnerable to demolitions.

In 2009, the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) expressed concerns of this nature with regards to the “Special Partial Outline Plans” devised by the ICA in the 1990s:

*“the significant element of special plans is in the line demarcating the plan’s boundaries. Generally, demarcation lines of special plans are tightly around the main [most densely] built-up area of each community. Lands located on the margins of the area and which are available for development are typically excluded. **In almost all cases, the special plan leaves outside its boundaries buildings in existence at the time of approval.... As a result, while the approval of a special plan will lift the threat of demolition for families whose houses are included within it, the level of threat of those excluded from the approval areas will eventually increase.”** (OCHA, *Special Focus*, December 2009)*

27 A Cassese, (n 16), 420.

28 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) International Court of Justice (ICJ) Rep 2004, paragraph 135.



ii. Illegal Construction and Expansion of Settlements

The International Court of Justice 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories has confirmed the illegality of settlements under international law. Israeli settlements violate Article 49(6) of the 1949 Fourth Geneva Convention, which prohibits the transfer of the Occupying Power's own civilian population into occupied territory. In addition, settlements violate Article 53 of the same Convention, which prohibits unlawful appropriation and destruction of public and private property in occupied territory. These activities may amount to grave breaches of the Geneva Conventions and war crimes under the Rome Statute.²⁹

Moreover, by transforming the demographic composition of the West Bank, including East Jerusalem, Israel's settlement policy and its ensuing institutional practices of dispossession and displacement of the Palestinian people have led to the long-term denial of their basic human rights, including the fundamental right to self-determination. In this regard, the settlements impede Palestinian access to and control over their natural resources by, among other activities, exploiting mineral riches and fertile agricultural lands.

As professional planners are inclined to design plans that have the greatest chance of being approved, proposed donor-funded Master Plans are likely to take into account unlawful considerations that COGAT, as the approval body, seeks to protect. This will include settlements and the current route of the Wall, thereby creating a level of self-censorship and implicit recognition of unlawful objects before the plans are even submitted for approval.

iii. The Prohibition of Forcible Transfer

Combined with other policies, Israel's practice of demolishing houses and placing building restrictions on Palestinian communities leads to the forcible transfer of the protected population to different locations, either in the region, in other areas of the OPT or abroad. The demolition of

²⁹ Additional Protocol I to the Geneva Conventions (1977) Article 85(4)(a); Rome Statute of the International Criminal Court (1998) Articles 8 (2)(b)(iv) and 8(2)(b)(vii).



structures essential for livelihood and shelter, and the denial of permits for the construction of further infrastructure create a coercive environment in which Palestinian residents of Area C do not exercise a genuine choice when they move away from their land.³⁰ Consequently, Israel is in violation of the customary prohibition against forcible transfer of protected persons enshrined in Article 49(1) of the Fourth Geneva Convention and listed as a war crime by the Rome Statute of the International Criminal Court.³¹ The forcible transfer of the protected Palestinian population is closely linked to Israel's unlawful transfer of its own civilian population into the occupied territory, which, as mentioned above, is expressly prohibited, regardless of its motive.

As a result of the increased risk of demolition faced by families whose houses are located outside of the proposed Master Plans, increasing numbers are likely to relocate either inside the approved Master Plan area, or inside Areas A and B. In 2009, Save the Children UK carried out research into families living in high-risk areas, including Area C in the West Bank and land adjacent to or within the buffer zone in the Gaza Strip. It was found that approximately half of the respondents had been temporarily or permanently displaced at least once since 2000.³² Research such as that carried out by Save the Children UK points to the coercive environment already prevalent in Area C and raises serious concerns that the process of developing Master Plans may contribute to such an environment and possibly result in accelerated indirect forcible transfer of Palestinian communities.

30 The ICTY held that the term 'forcible transfer' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. *Prosecutor v Radislav Krstic*, (Judgment, Trial Chamber) ICTY-98-33-T (2 August 2001), paragraphs 529-530.

31 The customary law prohibition applies both to deportations outside the borders of an occupied territory and to transfers within that territory. *Prosecutor v Radislav Krstic*, (Judgment, Trial Chamber) ICTY-98-33-T (2 August 2001), paragraphs 519 et seq. In addition, the use of coercive measures to enforce relocation may constitute the threat of an act of violence against which protected persons must be protected according to Article 27(1) of the Fourth Geneva Convention. M Bothe, 'Expert Opinion on The Limits of the Right of Expropriation (Requisition) and of Movement Restrictions in Occupied Territory (Firing Zones)' (2 August 2012), 4; Rome Statute of the International Criminal Court Article 8(2)(a)(vii).

32 Save The Children UK, 'Forced Displacement in the Occupied Palestinian Territory' (October 2009) <http://www.ochaopt.org/documents/opt_prot_savethechildren_forced_displacement_in_the_opt_oct_2009.pdf> accessed 15 October 2014, 6.



iv. Violations of International Human Rights Law

The International Covenant on Civil and Political Rights (ICCPR) provides for protection against arbitrary or unlawful interference with privacy, family, home or correspondence.³³ The International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes the right to adequate housing and an adequate standard of living, as well as the right to education, work, family life and the highest attainable standard of health.³⁴ Israel's planning regime in Area C and its policies of demolishing Palestinian structures and confiscating property fail to respect and fulfil the above-mentioned Palestinian human rights. By implicitly recognising Israel's planning regime and facilitating its associated practices of housing demolitions and property confiscation, Master Plans also risk contributing to the violation of the aforementioned human rights.

v. Prohibition on the Acquisition of Territory by the use of Force and the Inherent Right to Self-Determination

CIL prohibits States from resorting to the threat or use of force³⁵ and stipulates that the acquisition of territory through the use of force is equally unlawful.³⁶ In the same vein, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States emphasises that «[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal.»³⁷

In addition to the prohibition under international law against Israel acquiring Palestinian territory by force,³⁸ IHL stipulates that as an Occupying Power Israel does not acquire sovereignty over the OPT.³⁹ Occupation is instead by its very nature a state of temporary affairs and, as detailed above,

33 International Covenant on Civil and Political Rights (ICCPR) (1966) Article 17.

34 International Covenant on Economic Social Cultural Rights (ICESCR) (1966) Articles 6, 11 and 13.

35 Charter of the United Nations (1945) Article 2(4).

36 ICJ Advisory Opinion (n 28) paragraph 87.

37 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Adopted by the Twenty-fifth Session of the UN General Assembly A/RES/25/2625 (24 October 1970).

38 UN Security Council Resolution 242S/RES/242 (22 November 1967).

39 ICRC (n 15).



Israel is under a general obligation to respect the laws in force prior to the occupation. Any legislative changes that are made by the Occupying Power must not contradict the temporary nature of occupation envisioned by IHL.⁴⁰ The Israeli planning regime based upon Military Order 418, however, geographically fragments the occupied territory and alters its demographic composition by virtue of its furtherance of the settlement enterprise and accompanied displacement of the Palestinian population. In pursuing its illegal planning regime, Israel is acquiring land through the use of force and subsequently allocating this land for the development and expansion of illegal settlements.

International human rights law provides for the Palestinian inherent right to self-determination,⁴¹ which includes the right to pursue economic, social and cultural development and encompasses the exercise of permanent sovereignty over natural resources.⁴² The restrictions imposed upon Palestinian construction and development in Area C, combined with the extensive destruction and confiscation of Palestinian property, are clear obstacles to the realisation of the Palestinian right to self-determination.

The development of Master Plans requiring approval by the Israeli authorities makes the transfer of ownership over planning in Area C to the Palestinians increasingly remote. The plans would further undermine the Palestinian right to self-determination and risk contributing to the violation of the cornerstone principle of the law of occupation, which stipulates that occupation is by definition temporary.⁴³ In addition, Master Plans may further the already existing Israeli-imposed fragmentation of the OPT by isolating Area C from Areas A and B on the one hand and East Jerusalem on the other. As outlined above, control over Area C is vital for development, as well as infrastructural and natural expansion purposes.

40 Diakonia (n 18), 14.

41 ICCPR and ICESCR, Article 1(1).

42 UN General Assembly Resolution A/RES/67/229, (22 November 1967); Human Rights Council Resolution A/HRC/25/L.36 (25 March 2014). The customary character acquired by the principle of permanent sovereignty over natural resources was reiterated in the *Democratic Republic of Congo v Ugandacase* (ICJ 19 December 2005) paragraph 244.

43 ICRC (n 15).



Third State Responsibility and the Obligation not to Fund or Facilitate the Development of Master Plans Requiring Israeli Approval

As discussed above, Israel's planning regime in the West Bank is illegal in and of itself, and gives rise to a number of corollary violations of international law. All High Contracting Parties to the Geneva Conventions undertake to respect and ensure respect for the Conventions in all circumstances.⁴⁴ As such, High Contracting Parties, including the Member States of the EU⁴⁵ and the State of Palestine⁴⁶ are obliged to promote Israeli compliance with the Conventions. Furthermore, under CIL, all States have an obligation not to recognise serious breaches of peremptory norms of international law, including the right to self-determination, the prohibition against extensive destruction and appropriation of property and the prohibition on the acquisition of territory by the use of force and must not render aid or assistance in maintaining such a situation.⁴⁷ EU and PA involvement in the funding and development of Master Plans for Area C, however, overlooks Israel's violations of international law, including its obligation to administer the entirety of the occupied territory in the interests of the occupied population and its duty to respect, protect and fulfil its human rights obligations in the OPT.

Furthermore, the development of Master Plans implicitly recognises the unlawful demolition of structures not included in the Master Plans as legal. This in effect lends justification to the continuation of Israel's discriminatory planning regime and the consequent forcible transfer of the occupied Palestinian population to different locations, whether in the region, in other areas of the OPT or abroad.

44 Geneva Conventions (1949) Common Article 1.

45 The EU as an international actor and some of its Member States have undertaken the commitment to promote compliance with international law, and in particular international humanitarian law, through their external relations with third countries. Article 21(1) of the Treaty on the European Union notes that "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."

46 The State of Palestine became a High Contracting Party to the Geneva Conventions on 2 April 2014.

47 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, (2001) Articles 40 and 41.



In addition to the aforementioned violations of international law, the development of Master Plans risks setting a precedent in which their existence becomes a pre-condition for the approval of donor-funded humanitarian aid and development projects. As a result, these services would be provided in accessible areas, rather than in areas where it is most needed. This is contrary to IHL, which requires that the Occupying Power facilitate humanitarian relief by all means at its disposal.⁴⁸

Recommendations

i. To the Government of Israel, as the Primary Duty-bearer in the OPT:

- I. Transfer planning authority over the occupied territory to the local Palestinian population, allowing them to develop master and local plans for the entire West Bank, including East Jerusalem;
- II. Immediately cease the unlawful appropriation of Palestinian land and the confiscation, demolition and destruction of Palestinian infrastructure. Thereto Israel must:
 - Immediately cease its discriminatory policies and practices that deprive the occupied Palestinian population of essential means of livelihood and forcibly transfer protected persons to areas with minimum resources available and lacking basic services;
 - Immediately cease the commission of grave breaches of the Fourth Geneva Convention, and investigate and prosecute individuals, including corporate representatives, involved in the commission of war crimes in the OPT. In particular, those involved in the unlawful destruction and appropriation of Palestinian property and the unlawful transfer of the protected Palestinian population;
- III. Immediately and unconditionally bring to an end the construction of settlements in the West Bank, including East Jerusalem, as well as

⁴⁸ Fourth Geneva Convention (1949), Articles 30 and 59.



withdraw from and dismantle all existing settlement infrastructure. Furthermore, Israel must immediately cease the transfer of its own civilian population into the occupied territory, and cease its support of and subsidies for settlers and settlements;

- IV. Promptly afford Palestinian landowners and communities affected by its violations of international law effective legal remedies and reparations in accordance with international law standards.⁴⁹ This entails establishing new mechanisms within the Israeli legal system, as the current bodies are structurally discriminatory and do not meet international standards;

ii. To the International Community of Donors, including the European Union:

- I. Assess to what extent donor-funded projects may in fact implicitly recognise and facilitate Israel's violations of international law and ensure that all projects are carried out in compliance with third State responsibility under international law;
- II. Immediately disengage with the ICA when carrying out donor-funded projects in Area C;
- III. Make enquiries and publicly condemn Israel's demolitions of Palestinian infrastructure in the OPT;
- VI. Call for the revocation of Israeli Military Order No. 418 and the cessation of demolition orders for Palestinian structures;
- V. Hold Israel accountable for demolition of infrastructure projects, including through demanding compensation from the Israeli authorities;
- VI. Seek an appropriate solution for development in Area C while respecting the rights afforded to protected persons under international law.

49 UN General Assembly Resolution 60/147 (21 March 2006); Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law UN Doc A/RES/60/147 (16 December 2005) Article IX.



To the Palestinian Authority:

- I. Cooperate with donors to implement donor-funded projects in Area C regardless of ICA cooperation and approval;
- II. Cease its engagement with the ICA and freeze all existing engagement;
- III. Promote a national approach to planning that protects the territorial integrity of the OPT, namely the West Bank, including East Jerusalem, and the Gaza Strip;
- IV. Oversee third State donor-funded projects implemented in Area C and play a major role in ensuring that those projects do not sustain or contribute towards prolonging Israel's occupation of the OPT.

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