

Al-Haq's Campaign to Stop Collective Punishment
In Focus: Property Destruction



OVERVIEW

Israel's destruction of land and properties belonging either privately or collectively to the Palestinians has been a dominant feature of the occupation since 1967, and is a clear violation of international law. Despite repeated condemnations by the international community of Israel's illegal collective punishment against the Palestinian people, the human rights situation in the Occupied Palestinian Territories (OPT) has deteriorated significantly since the outbreak of the *Intifada* in 2000. The daily destruction of Palestinian property, including homes, commercial properties, business, agricultural land, educational and health facilities, water, sewage and electricity networks have all resulted in the deterioration of the housing and living conditions of the civilian population as a whole. Israel's policy of demolishing Palestinian property has been implemented extensively particularly in areas near Israeli settlements, along bypass roads, and near positions belonging to the Israeli occupying forces. Israeli settlements near Palestinian built-up areas impose a 500-metre buffer zone in which all Palestinian homes and buildings are destroyed. In addition, settler bypass roads also impose the demolition of structures and closure of over 150 metres of Palestinian lands to each side. In the past three years, Israel has arbitrarily destroyed more than 3,000 Palestinian homes, as well as hundreds of workshops, factories and public buildings in the OPT.

The most intensive large-scale destruction of civilian property took place during the Israeli



Trees to be uprooted to build a bypass road

military offensives "Operation Defensive Shield" and "Operation Determined Path", both conducted largely in the West Bank from February to May 2002. During both incursions, the Israeli military systematically damaged or destroyed civilian homes, commercial properties, educational institutions, hospitals, clinics, medical vehicles, and carried out targeted destruction of civilian infrastructure. Although Israel claims that its military forces open fire only in situations of imminent danger to their lives, and then at identified Palestinian sources of fire, UN workers and human rights organisations have all confirmed that Israeli forces fire live ammunition and shells indiscriminately into densely populated Palestinian areas, destroying the property of unarmed civilians who pose no threat. Under the pretext of retaliating for resistance, Israeli forces have contaminated water collection tanks, damaged pumps and destroyed water supplies of refugee camp families by shooting holes in rooftop cisterns. The destruction of the Palestinian economic and health infrastructure has also resulted in a severe deterioration in health and educational services and facilities, thereby particularly affecting children.

In the Gaza Strip, targeted attacks on civilian properties have also devastated many areas. Estimates from the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) indicate that the damage caused to structures in Gaza City and its refugee camps by Israeli authorities in March 2002 reached a value of US \$2.3 million. During the prolonged siege of the refugee camp and town of Jenin in April 2002, approximately 169 Palestinian homes were totally destroyed, thereby affecting 800 individuals. Between 10 and 12 October 2003, Israel's house demolitions in the town of Rafah left an estimated 100 building complexes, which housed more than 1,000 people, totally demolished. Destruction to civilian property is conducted without prior warning to residents, who in most instances are not given enough time to remove their belongings. Even where formal notification is provided, the timeframe provides no opportunity for effective appeal against the order. Moreover, Israeli authorities maintain that they do not bear responsibility for these incidents and that therefore the

QUICK FACTS

- Between September 2000 and April 2003, 197 schools in the OPT were shelled, 11 of which were totally destroyed during the 2002 incursions.
- Since September 2000, at least 1,582 Palestinian homes have been destroyed in the Gaza Strip, more than 850 of those in the refugee camp of Rafah.
- By December 2003, 4,867 buildings were severely damaged, 158 of which were public institutions. Damage to road infrastructure during the same period reached an estimated \$54.75 million in direct costs.

complainants have no right to demand reparation, including compensation.

Buildings and centres of cultural, religious, and historic significance in Bethlehem, Hebron and Nablus have also suffered significant damage, particularly since 2000. On 18 December 2003, Israeli occupying forces launched a new military operation into Nablus City and the adjacent Balata refugee camp, and subjected its population to a general curfew. Israeli occupying forces demolished the Abdel Hadi Building, a 400-year-old historic building in the old city, causing infrastructure damage to thirteen houses in the vicinity. Eight months previously, Israel launched another operation into Nablus during which 60 historic houses were totally demolished and 200 suffered partial damage. At its annual meeting in June 2003, the World Heritage Committee of the UN's cultural branch, UNESCO, emphasised the exceptional universal value of Palestinian heritage and condemned the destruction and damage inflicted upon it.

One form of destruction which has been common for years is the uprooting of fruit and olive trees. By 2002, fruit trees constituted 63.8% of the cultivated area of the OPT, comprising a principal source of income for Palestinian residents. Moreover, since 2000, Israeli occupying forces have escalated their policy of razing large areas of Palestinian agricultural land; uprooting trees including olive and citrus groves; flattening greenhouses; and destroying crops, wells and water irrigation networks. Although officially justified as a "security measure", such property

destruction is in practice a form of collective punishment. Often the widespread destruction of agricultural land and crops has been carried out for the illegal expansion of Israeli settlements and related infrastructure in the OPT. By September 2003, the Israeli military had razed approximately 20,868 dunums (about 5,200 acres) of Palestinian agricultural land in the Gaza Strip, or approximately 12% of its total agricultural land. Unattended by any form of due process, the only "crime" committed by the landowner is to own land that was allegedly used by others for illegal purposes such as throwing stones.

There has also been a significant increase in settler violence, notably against lands, crops, farm equipment, and livestock. In that context, Israeli settlers have used physical force and death threats to intimidate Palestinian landholders, including the destruction and confiscation of Palestinian property while these communities are under curfew.

Israeli authorities have stepped up the confiscation and destruction of agricultural land to seize more land and create buffer zones along the Annexation Wall. Built inside the West Bank, it has deprived Palestinians of access to their lands, which for the majority is their main means of subsistence. In 2002 in Qafin, a village west of Jenin, Israeli bulldozers tore down most of the olive trees before their owners could harvest the crop, in order to make way for the Wall. In the Governorate of Jenin alone, by 23 July 2003, more than 48,000 dunums (approximately 12,000 acres) have been fenced off for its construction.

LEGALITY

International Humanitarian Law

Israel's obligations as the Occupying Power in the OPT are set out in the Regulations annexed to the Fourth Hague Convention Respecting the Laws and Customs of War on Land, and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Unlike the Hague Regulations, the applicability of which Israeli authorities have accepted due to their customary nature, Israel contests the applicability of the Fourth Geneva Convention to the OPT. However, the vast majority of the international legal community has rejected these claims, and has repeatedly reiterated that Israel cannot evade the obligations it committed to undertake as a High Contracting Party to the Convention.

International humanitarian law obligates parties to uphold the principle of distinction between civilians and civilian objects on one hand (including schools and public government buildings) and combatants and military targets on the other. According to Article 56 of the Hague Regulations,

the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when state property, shall be treated as private property.

The article further stipulates that destruction or wilful damage done to institutions of this nature is forbidden and should be made the subject of legal proceedings.

In addition to prohibiting direct attacks on civilians, international humanitarian law prohibits indiscriminate and disproportionate attacks. Indiscriminate attacks include those which although directed at a military target, are carried out without regard to the likely consequences for civilians. Thus it remains the duty of a military commander to ensure that the target is in fact a legitimate military objective, and that it remained so at the time of attack. Even if a number of distinct military objectives are located in an area containing a concentration of civilians or civilian objects, they may not be the subject of a single area attack.

The principle of proportionality is also a fundamental rule of customary international law and should always be observed. Thus a party to a conflict may not damage or destroy civilian property if the damage is excessive compared to the military advantage to be gained. The systematic and disproportionate nature of Israeli destruction of Palestinian property makes clear that the Israeli argument that its operations are “isolated incidents” is a fallacy. Further, some instances of property destruction appear to be reprisals against Palestinian civilians, which are prohibited by Article 33 of the Fourth Geneva Conventions, and Article 50 of the Hague Regulations.

While some of the prohibitions set down by both the Hague Regulations and Fourth Geneva Convention permit no exceptions because of their humanitarian value, other provisions stipulate that the prohibition on the commission of certain acts, such as property destruction, is subject to exceptions. However, like all exceptions in international

humanitarian law, it must be strictly applied. Hence, the destruction of civilian property, if not justified by military necessity, violates Article 53 of the Fourth Geneva Convention that prohibits any destruction by the Occupying Power of real or personal property, except where such destruction is rendered absolutely necessary by military operations. It also violates Article 33 of the same Convention, which prohibits reprisals and collective penalties against protective persons and their properties. Moreover, it constitutes a grave breach under Article 147 of the Fourth Geneva Convention.

International law also grants special protection to certain objects such as cultural objects. According to Article 1 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, they include movable or immovable property of great cultural importance and centres containing a large amount of cultural property. While Article 4 of this Convention permits that the general protection to cultural property can be waived where “military necessity imperatively requires such waiver,” special protection may be withdrawn only in exceptional cases of unavoidable military necessity. The occupying powers have also similar duties.

International Human Rights Law

The applicability of international humanitarian law during an armed conflict does not preclude the application of international human rights law including during belligerent occupation. Article 3 of the Universal Declaration of Human Rights states that “everyone has the right to life, liberty and the security of person”. Israeli actions of property destruction, house demolitions and land confiscation breach international human rights instruments which it has ratified such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination. Despite Israeli claims to the contrary, UN treaty monitoring bodies have repeatedly reaffirmed that Israel’s obligation under their respective conventions apply to the OPT.

For example, in 2003, the UN Human Rights Committee requested that Israel ceases forthwith the practice of property destruction and home demolition in the OPT. It also stated that such actions contravene Israel’s

obligations under the ICCPR to ensure the rights of the Palestinian population not to be subjected to arbitrary interference with one's home; to freedom to choose one's residence; and to equality of all persons before the law and equal protection of the law. Furthermore the Committee endorsed the 2001 position of the UN Committee Against Torture, which stated that Israel's policy of closures and its demolitions of Palestinian homes "may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment".

The demolition of houses and other property also constitutes a violation of the right to an adequate standard of living, including the right to adequate housing, under Article 11(1) of the ICESCR. The Covenant further states that "in no case may a people be deprived of its own means of subsistence," and reiterates that no state, group or person has the right "to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein...." Clearly, Israel's practice of property destruction is a breach of numerous fundamental human rights provisions.

Israeli Caselaw

In some instances Israel has claimed that the closure of land areas to their Palestinian owners and destruction of Palestinian properties in areas adjacent to settlements conforms to the local law and planning regulations. However, at the base of these practices is a breach of international law of treaties. As noted in Article 27 of the Vienna Convention on the Law of Treaties, "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". As such, Israeli reliance on local law does not justify its violations of its international legal obligations.

ABOUT AL-HAQ's CAMPAIGN

Since the beginning of the Israeli occupation of the West Bank and Gaza Strip in 1967, Israeli authorities have utilised numerous types of collective punishment and measures of intimidation such as house demolitions, mass arrests, restrictions on freedom of movement, property destruction, and, more recently, the construction of the Annexation Wall, throughout the OPT. International law, notably the Fourth Geneva Convention, clearly prohibits the Occupying Power from penalising a group for the actions of individuals if the

OTHER RESOURCES

Al-Haq, "Property Destruction," in *In Need of Protection*, 2002

B'Tselem: *Policy of Destruction: House Demolition and Destruction of Agricultural Land in the Gaza Strip*, (Information Sheet), February 2002, and *Foreseen But Not Prevented: The Israeli Law Enforcement Authorities Handling of Settler Attacks on Olive Harvesters* (Case Study No. 16), November 2002

Crimes of War Project, "Property: Civilian, Destruction of", by Amira Hass and "Property: Wanton Destruction of" by Victoria Brittain, in *Crimes of War: What the Public Should Know*, 1999

Palestinian Centre for Human Rights, *Three Years of Israeli Violations of International Humanitarian Law in the Occupied Palestinian Territories*, 29 September 2003

group members are not jointly responsible. The obligation to respect and ensure respect of the Convention is not limited to the parties to a conflict but extends to all 191 High Contracting Parties to the Convention. Coinciding with the 25th anniversary of the establishment of Al-Haq, the organisation has launched this campaign to stop collective punishment. The goal is to draw attention to the legal responsibility of the High Contracting Parties to the Convention to uphold this obligation and help bring to an end Israel's use of collective punishment. For more information on Al-Haq and this campaign, contact us at:

PO Box 1413
Ramallah, West Bank
972 2 295 4646 / 972 2 295 6421 (tel.)
972 2 295 4903 (fax)
<http://www.alhaq.org>
haq@alhaq.org



AL-HAQ
25 Years Defending
Human Rights
(1979-2004)