

Mandates of 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; the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

REFERENCE:
UA ISR 4/2017

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Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Human Rights Council resolutions 31/9, 32/11 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the situation of the residents of Khan al Ahmar in Area C of the West Bank of the Occupied Palestinian Territory, who are facing possible imminent transfer which, in the existing coercive environment, may constitute forced displacement.**

According to the information received:

On Sunday 19 February 2017, vehicles from the Israeli Civil Administration (ICA) together with additional police and army vehicles entered the Khan al Ahmar community and declared the area a Closed Military Zone. On this date, while the area was declared a Closed Military Zone,, the authorities delivered a total of 42 Stop Work Orders to residents, covering a total of over 140 structures, including homes, solar panels, benches, drinking fountains, water tanks, and other livelihood structures. These orders cover all structures in the community, including a school that serves the surrounding communities. The Closed Military Zone was subsequently lifted.

The residents were initially given four days, until Thursday 23 February, to present their objections at an ICA military appeals committee, as opposed to the usual two weeks. Their attorney was able to request an extension of this deadline for an additional week, until Thursday 2 March. If the committee does not agree with the community's objections, they will be rejected and demolition orders can then be issued immediately.

On 2 March 2017, the attorney representing the community filed an emergency petition to the High Court calling for protection of the village and an injunction on the stop-work orders. In the event of the issuance of demolition orders, usual

practice dictates that residents be allowed 7-14 days to self-demolish structures or to take legal action and file a petition against demolition. In his emergency petition, the community's attorney requested that the 7-14 day notice period be respected, but he has expressed concern that due to the unusual nature of this case, this procedure may not be respected. As of 6 March 2017, the duty judge, who is a settler himself, had not yet issued a decision on the petition.

On 5 March, the community received 42 demolition orders, upgrading all previous stop-work orders to demolition orders. The community has been given seven days to self-demolish all structures in Khan al Ahmar, including the school. This will leave 130 Bedouin residents homeless, half of them children.

Bedouin communities in Area C such as Khan al Ahmar are among the most vulnerable in the Occupied Palestinian Territory. Roughly, 70% of Palestinian Bedouins and herders in the West Bank are refugees, and 60% are children. Traditionally, semi-nomadic herding communities, the Bedouins in the West Bank, have struggled to maintain their way of life as they have been subject to repeated displacements since 1948. Settlements, checkpoints, permit requirements for construction and movement and other measures put in place by the Israeli government have made it extremely difficult for these communities to access not only grazing land but also water. They rely heavily on donor-funded humanitarian assistance for basic needs and services as well as shelter (which is increasingly targeted by demolition orders).

These communities face significant pressure from the Israeli government to move to planned relocation sites, which would render them internally displaced persons. The pressure is greatest on communities that occupy land that the Israeli government has allocated for settlement expansion, such as land that has been identified as part of the E1 settlement expansion plan, which seeks to expand the Maale Adumim settlement, further isolating East Jerusalem and dividing the West Bank. The planned relocation sites are generally smaller and necessarily more densely populated than traditional communities, and are designed for the construction of permanent homes. Thus the Bedouins who are moved to these sites are not able to continue their traditional way of life.

These conditions create what amounts to a coercive environment, which means that there can be no genuine consent to relocate given by these communities.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the circumstances described above indicate an imminent forcible transfer of the residents of Khan al Ahmar.

In connection to the above-alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under international humanitarian law

and human rights law. In particular, we would like to refer to the prohibition on forcible transfer detailed in Article 49 of the Fourth Geneva Convention, which further prohibits the transfer of the population of an Occupying Power into the occupied territory. Forcible transfer is defined as a war crime and a crime against humanity in the Rome Statute. “Forcible” in the context of the Rome Statute has been interpreted to mean not only physical force, but may also 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.” While exceptions can be made, these are only permitted when evacuation of an area is required for security or reasons of imperative military necessity, and in those cases such evacuation must be temporary.

We would also like to draw your Excellency’s Government’s attention to article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. In interpreting this provision, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing includes guarantees of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. We further recall General Comments No. 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy of those that are affected by eviction orders. Demolitions and destruction of property are strictly forbidden under international human rights law and standards. According to these General Comments, Israel must further explore all feasible alternatives to demolitions and forced eviction in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of the evicted persons by providing adequate alternative housing facilities, resettlement, access to productive land and compensation for lost property.

Furthermore, we recall the provisions of the Guiding Principles on Internal Displacement, which, under Guiding Principle 6, establish that “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence”. Moreover, Guiding Principle 7 states that “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether.” The Guiding Principles further state under Guiding Principle 9 that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of this matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please describe measures being taken in order to ensure that the Bedouin communities in Area C are afforded the protections required by the Fourth Geneva Convention, including the prohibition on forcible transfer.
3. Please indicate what measures have been taken to ensure that the right to housing of the Bedouin community is protected, respecting their semi-nomadic way of life. Please provide detailed information of relocation and compensation plans for those people who will be expelled from Khan al Ahmar in Area C of the West Bank..
4. Please indicate if all feasible alternatives to demolitions and imminent transfer to the planned relocation sites have been explored in consultation with the residents of the Bedouin community of Khan al Ahmar in Area C and if so, please provide details of the process and results of those consultations. Please also explain why proposed alternatives to the demolitions and transfer have been deemed unsuitable.
5. Please provide information on measures taken to ensure compliance with the Guiding Principles on Internal Displacement and the prohibition of arbitrary displacement of any individual.
6. Please provide information about legal remedies available to the Bedouin community facing demolitions and possibly homelessness or other violations of their right to adequate housing.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to halt the alleged violations and prevent their re-occurrence, and in the event that investigations support or suggest the above allegations to be correct, to ensure accountability of any person responsible.

We would like to additionally inform that we may publicly reiterate our concerns as we are of the view that the information upon which a possible press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release may reiterate that we have been in contact with your Excellency's Government's to clarify the issue in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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