

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 and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

REFERENCE:
AL ISR 11/2020

14 December 2020

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 and Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, pursuant to Human Rights Council resolutions 43/14 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 alleged imminent forced evictions against eight Palestinian families- the **Al-Kurd, Al-Daoudi, Abdurey-Dajani, Hammad, Iskafi, Al-Qassim, Al-Jauni** and **Al-Sabagh families** - from their home in **Sheik Jarrah, East Jerusalem**.

According to the information received:

On 8 October 2020, the Jerusalem Magistrate Court granted a petition requested by the Nahalat Shimon International Company to evict four Palestinian families in Sheik Jarrah, a neighbourhood located between the Old City of Jerusalem and Mount Scopus. The eviction lawsuits were initiated by the Nahalat Shimon International Company sometime between September 2009 and December 2010. The four separate eviction cases were jointly heard, based on a court decision issued on 15 November 2015.

The ruling was delivered on 28 October 2020 to the families' lawyers, ordering the **Al Kurd, Iskafi** and **Al-Qassim** families to vacate their properties within 30 days and the **Al-Jauni** family by 1 January 2021. The four extended families consist of seven households, at least 27 people in total, including 11 children. The Court also ordered each of the families to pay 70,000 INS (around 21,000 USD) to Nahalat Shimon International in compensation for incurred legal expenses.

The Court ordered the Police to support the enforcement of the ruling in case the families do not vacate the properties within the prescribed deadlines, due to the location and political sensitivity of the properties.

The Jerusalem Magistrate Court held that the **Al Kurd, Jauni** and **Al Qassim** families breached their protected tenancy obligations by not paying rent, and by adding illegal extensions to the property without the consent of Nahalat Shimon International. The families claimed that the registration of the Sheik Jarrah land

in favour of Nahalat Shimon Settler Company was illegal, and that, in the absence of any proven right to the company, they have no legal duty to pay rent or to seek its approval to conduct renovations in the property.

Similarly, on 4 September 2020, the Israeli Magistrate Court issued an eviction order against three other families in Sheik Jarrah, the **Al-Daoudi, Abdurey-Dajani and Hammad** extended families. The Court directed at least 24 people to leave their home by 1 August 2021. The Court also required each family to pay 30,000 INS (around 9,000 USD) for incurred legal expenses.

Taking into account other eviction orders previously requested by Nahalat Shimon International, at least 12 Palestinian extended families, 27 households and more than 130 people are currently under the risk of eviction in Sheik Jarrah. On 3 November 2020, the Magistrate Court dismissed a request for an interim injunction on the eviction order received by the **Al-Sabagh** family; the court proceeding was again initiated by the Nahalat Shimon International Company in 2009. The Court ordered the extended family to vacate the property no later than 24 November 2020 and to pay 7,500 NIS (around 3,000 USD) to Nahalat Shimon International in compensation for legal expenses. On 18 November 2020, the **Al-Sabagh** family was granted an injunction by the District Court until a decision is taken on another appeal filed with the District Court. The injunction was conditioned on the family depositing 25,000 NIS (around 7,600 USD) to the Court. The **Al-Sabagh** family remains under an **imminent threat of eviction** and could be forced to leave its home within a few weeks, severely affecting the lives of at least five households and more than 30 people.

Moreover, the aforementioned judicial orders are part of a broader situation that imperils the status and rights of more than 65 families in the Palestinian neighbourhood of Sheik Jarrah in East Jerusalem.

In the context of a humanitarian initiative, in 1956 the Jordanian Government allocated land in the ancient Palestinian neighbourhood of Sheik Jarrah for UNRWA, which sponsored the construction of housing units for 28 families who had become refugees in 1948. Through individual agreements, the Government of Jordan leased the 28 plots of land to the families, where UNRWA constructed their residences.

The agreements between the families and the Government of Jordan stipulated that the ownership would be transferred to the tenants within three years of each lease contract. Despite having fulfilled the terms of the contract, the families did not receive the legal titles to the land before the 1967 war, after which East Jerusalem was unilaterally annexed to Israel. The original families chosen by UNRWA have now become more than 60 families that comprise over three generations of Palestinians living in Sheik Jarrah.

In 1972, the settler groups of the “Sephardic Community Committee” and the “Knesset Yisrael Committee” claimed the ownership of a number of houses in

Sheik Jarrah on the basis of Ottoman property documents. To date, no Israeli Court has formally recognised the ownership in favour of these groups after assessing in-depth the substance of the property claim and the authenticity of the Ottoman documents. Nonetheless, the claimants succeeded in having the land used for the UNRWA housing project to be registered in their name by the Israeli Land Registration Office.

The two aforementioned settler groups began presenting demands of rental payment to the 28 Sheikh Jarrah families; in 1982, they filed a joint civil suit against 27 families. According to the information received, the attorney representing 17 of those Palestinian families reached an agreement through which they would be considered “protected tenants” rather than owners of their homes.

The 1982 agreement (Toussia-Cohen agreement) was upheld by an Israeli Court and became a precedent for subsequent similar disputes as well a legal basis for forced evictions demands. The Toussia-Cohen agreement failed to address the validity of the ownership claims from the “Sephardic Community Committee” and the “Knesset Yisrael Committee” and it appears that at no point did the families give consent to or were consulted on the settlement negotiated by the lawyer who did not represent all Palestinian families living in Sheikh Jarrah. The agreement also prevented further investigation into the validity of the ownership by Israeli Courts.

Following the Toussia-Cohen agreement, the “Sephardic Community Committee” and the “Knesset Yisrael Committee” eventually laid claims to the land by selling the ownership to the Nahalat Shamon Company in 2003. Therefore, the company began to request the eviction of Palestinian families from Sheik Jarrah. In November 2018, the Israeli Supreme Court rejected and denied the right of Palestinian families to challenge the ownership in the Eastern area of Sheikh Jarrah and ruled that the families were barred due the statute of limitations. This argument was reiterated by the Jerusalem Magistrate Court on 8 October 2020, rejecting the demands of the families who are now under the immediate risk of eviction.

According to the information received, since 2008 at least 13 families have been evicted in Sheik Jarrah due to judicial decisions taken on similar legal grounds.

These cases sit within a context where hundreds of Palestinian in East Jerusalem are at risk of forced displacement or evictions, especially in the areas of the Old City, Sheikh Jarrah and Silwan. According to allegations received, these evictions respond to a broader scheme aimed at establishing Israeli ownership and control over the so-called “historic basin” of East Jerusalem, which would eliminate the contiguity with the West Bank.

The alleged forced eviction of Palestinian families in East Jerusalem was the subject of joint urgent appeals in April and November 2015 by the Special

Rapporteur of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern for the **Al-Kurd, Al-Daoudi, Abdurey-Dajani, Hammad, Iskafi, Al-Qassim, Al-Jauni** and **Al-Sabagh families** in Sheikh Jarrah as well as for the numerous other families in East Jerusalem who live under threat of forced eviction from their homes.

We would like to remind your Excellency's government of its obligations under international humanitarian and human rights law, and note that the forced evictions would be carried out against Palestinian family in occupied East Jerusalem, thus displacing protected persons under article 4 of the Fourth Geneva Convention. This may amount to a violation of the prohibitions on forcible transfer under articles 49 of the Fourth Geneva Convention, which, as the occupying Power, Israel is obliged to respect. Considering that according to the allegations received Nahalat Shimon International functions both as real estate company and a private settler association, the additional factor that settlers would be likely be taking over the houses or the land engages the provision of the same article prohibiting the occupying Power from transferring parts of its own civilian population into the territory it occupies.

We are also concerned that this case contains elements of discrimination, contrary to article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), both of them ratified by Israel on 3 October 1991, and that, as part of a broader pattern of practices and policies implemented by Israel against Palestinians in East Jerusalem, the case impacts on the right to self-determination of the Palestinian people, protected under the common article 1 of ICCPR and ICESCR.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 or any comment you may have on the above mentioned allegations, including the legal basis of the eviction orders.

2. Please provide information concerning the steps taken to ensure the rights of due process and procedural fairness are applied in these cases, including while the appeal of the eviction order is pending.
3. Please provide information on what measures Israel has taken or intends to take to ensure that the affected families, as protected persons under international humanitarian law, are not subjected to violation of their human rights and are not subject to forced evictions, displacement or forcible transfer contrary to international human rights law and standards and international humanitarian law.
4. Please provide information on measures undertaken to ensure that families under risk of forced eviction had been offered alternatives; and that adequate compensations was considered and afforded to them.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the threatened forced eviction of the **Al-Kurd, Al-Daoudi, Abdurey-Dajani, Hammad, Iskafi, Al-Qassim, Al-Jauni** and **Al-Sabagh families** or other any Palestinian family in Sheik Jarrah and East Jerusalem.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Balakrishnan Rajagopal
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

Michael Lynk
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forward by the situation described above.

As clarified by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, forced evictions constitute a gross violation of the right to adequate housing protected by article 11 of the ICESCR, and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. Paragraph 15 of the same General Comment provides that if evictions can take place only in exceptional circumstances, and after procedural protections, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves.

We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. The Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. In addition, we would like to refer your Excellency's Government to the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43), notably guideline no. 6 on forced evictions.

We would also like to call to your Excellency's Government's attention to the latest report by 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 on the implications of the COVID-19 pandemic on the right to housing (A/75/148). In the report, the Special Rapporteur argues that housing is the front line in the battle against the pandemic, and stresses the added vulnerability and heightened risk of infection that persons in homelessness face during the pandemic. In that regard, we would like to reiterate the call contained in the report for a moratorium on evictions and foreclosures and on eviction proceedings against everyone, and a zero-eviction commitment from the Government (par. 62-68).