

Property Destruction as a Collective Punishment in the Occupied Palestinian Territories

By Anne Massagee¹

In April 2002, Israeli authorities began constructing what UN Special Rapporteur John Dugard has termed the Annexation Wall in the vicinity of Far'on village, in the Tulkarem Governorate of the West Bank. Its construction resulted not only in the confiscation of 40,000 dunams of village land, but also entailed the destruction of 65,000 olive and other fruit trees, 20 kilometres of water pipelines, and all the agricultural roads connecting Palestinian localities to the village land located behind the Wall. The destruction of Far'on property did not end with the Wall's completion in the area on 1 August 2003; since that time, tens of Israeli military orders have been issued to confiscate village land located east of the Wall and to demolish houses in the vicinity. This experience is common to residents of numerous villages throughout the West Bank, as evidenced by this testimony from a woman living in Masha in Salfit Governorate:

We used to live our life in a normal way, like all the other residents of the village, until 5 August 2003, the beginning of the construction of the tragic and racist Separation Wall, which no words can describe. I say this because this Wall has transformed our life into a hell through the confiscation of two dunams of our land and bulldozing of our garden nursery that contained hundreds of trees and flowers. This nursery was completely bulldozed for the benefit of the construction of the Wall. Our losses were estimated at 100,000 shekels, and now we live on one dunam instead of three.²

What happened in Far'on and Masha is a clear violation of international law. In particular, it constituted the crime of property destruction. Further, such destruction also represents a form of collective punishment, whereby Palestinians are penalised as a group for the acts of individuals. As such, these actions are breaches of several fundamental tenets of international law. Israeli authorities have utilised property destruction as a military tactic in the Occupied Palestinian Territories (OPT) from the beginning of the occupation in 1967. Since this time, Palestinians have been subjected to the destruction of their homes, commercial properties, religious and cultural sites, businesses, agricultural land, educational and health facilities, water and sewage infrastructure, and electricity networks. Moreover, although special protections are afforded to cultural property under international human rights and humanitarian law, Palestinian cultural property has not been spared. In 2002, Israeli occupying forces destroyed large sections of the historic Old City of Nablus as well as parts of Bethlehem and Hebron during "Operation Defensive Shield."

This tactic was also used since 1948 in many areas of historic Palestine, with the destruction of entire villages. Israel's use of property destruction frequently serves as a means to "'clear' Palestinians away, to make them 'move eastward,' and leave forever their childhood landscapes," as Israeli journalist Amira Hass describes the practice.³ When employed in such a broad manner, penalising Palestinians as a group either without regard to individual culpability, or in order to forestall breaches of the law, property destruction is a clear application of collective punishment.

¹ Legal Researcher, Al-Haq.

² Al-Haq Affidavit No. 2056/2004, 7 November 2004.

³ Amira Hass, "Property: Civilian, Destruction of," in R. Gutman (ed.), et al., *Crimes of War: What the Public Should Know*, London: W. W. Norton & Company, 1999.

Property Destruction & International Law

International humanitarian law is clear in its prohibition on property destruction. Property destruction is prohibited under the Hague Regulations, Article 56 of which states that the destruction of real or personal property is prohibited unless such destruction is rendered absolutely necessary by military operations. This prohibition was expounded upon in the Fourth Geneva Convention, Article 53 of which states,

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

This prohibition is based on the fundamental principle of distinction, whereby parties to a conflict must distinguish between civilians and civilian objects on the one hand, and combatants and military targets on the other. Civilian objects include not just property owned by individuals, but that of municipalities, religious and charitable institutions, and educational facilities. Further, any property destruction carried out must respect the principle of proportionality, ensuring that the resulting harm is not excessive in comparison with the anticipated military advantage. The extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, is also deemed to be a grave breach, i.e., a war crime with mandatory universal jurisdiction.

Conventional human rights law also contains provisions relevant to the matter of property destruction. This practice severely restricts the ability of Palestinians to exercise such rights as those to be free from arbitrary interference with one's home, to choose one's residence, and to an adequate standard of living, as upheld in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

Collective Punishment / Measures of Intimidation & International Law

In a number of instances, such as those in Far'on, Masha, and Nablus, Israeli actions also constitute collective punishment or measures of intimidation (i.e., those intended to forestall acts that may be committed in the future), which are prohibited by Article 33 of the Fourth Geneva Convention, which states,

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.

The International Committee of the Red Cross (ICRC) Commentary notes that this prohibition includes "penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principle of humanity, for acts these persons have not committed." As an Occupying Power, Israel must utilise only those measures which conform to the principles of human dignity and the rule of law.

It is also important to put the issue of property destruction within a broader context: Israeli authorities have been using collective penalties against Palestinians in the OPT for decades. During this period, Palestinians have been subjected to a range of measures, including property destruction, house demolitions, movement restrictions, mass arrests, and most recently the construction of the Annexation Wall. Officially, such policies are defended on the grounds of national security or military necessity. However, in practice, they are frequently utilised in order to repress political dissent, exact revenge, unlawfully seize land, or obtain

political gains. The end result is a policy which impacts on nearly every area of Palestinians' lives, restricting their ability to realise such rights as those to adequate housing, freedom of movement, work and an adequate standard of living, health, education.

No Means of Accountability

Arguably one of the most pervasive problems faced by Palestinians in the OPT is the lack of accountability for Israeli violations, including collective punishment. Even in such well-publicised instances as the recent announcement by Israeli Minister of Defence Shaul Mofaz that Israeli authorities will no longer utilise the policy of punitive house demolition, no mention was made of accountability for those responsible for punitively demolishing thousands of Palestinian homes over the years.⁴ Further, the announcement addresses just one form of this violation: only punitive house demolitions were deemed illegal, leaving Palestinians vulnerable to the demolition of their homes for administrative reasons (lack of a permit) or in the course of clearing operations. For those in Rafah, where clearing operations destroyed or rendered uninhabitable 167 buildings in a one-week period in May 2004,⁵ or along the route of the Wall, where homes and other property are destroyed for lack of permit, the violations will continue.

However, international law obligates the Israeli authorities to bring the perpetrators of such acts to justice. Should the Israelis fail to do so, other High Contracting Parties to the Geneva Conventions are under a legal duty to bring those individuals responsible before their own courts. It is for this reason that individual nation states which ratify the Conventions must also pass domestic legislation or adopt regulations to integrate the Convention's principles into national law, frequently termed Geneva Conventions Acts. Such laws are some of the means by which states uphold their obligation under Article 1 common to all four Conventions: "[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." This obligation, however, also includes other steps, notably the duty to search for and prosecute those alleged to be responsible for grave breaches; they must prosecute such persons or extradite them for trial in another state. Indeed, the obligation to respect and ensure respect was upheld by the International Court of Justice (ICJ) in the *dispositif* of its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* in July 2004.⁶

On 23 February 2005, in its response to a pending petition challenging the route of the Wall, the Sharon Government addressed the implications of the ICJ's Advisory Opinion. While reiterating its position that the Wall was not an appropriate issue for consideration by the ICJ, the Government noted that the factual basis on which the Advisory Opinion was based was lacking and inexact. Further, this basis had been made irrelevant by changes in the Wall's route and "improvements" in providing for the needs of the affected residents. In conclusion, the Sharon Government stated that the Opinion should have no application upon the cases being considered by the Israeli courts. This is unfortunately one more example of Israeli officials flouting their obligations under international law, which include the prohibition of collective penalties and measures of intimidation, with regards to Palestinians in the OPT.

For more information on Israel's use of collective punishment in the OPT, please visit Al-Haq's website at <http://www.alhaq.org>.

⁴ Amos Harel, "Mofaz orders halt to razing of terrorists' homes," *Ha'aretz*, 18 February 2005.

⁵ John Dugard, *Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the Situation of Human Rights in the Palestinian Territories Occupied by Israel Since 1967*, E/CN.4/2005/29, 7 December 2004, para. 12.

⁶ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, para. 163.