

## observations of unrwa on punitive demolitions in refugee camps in the west bank, 3 april 2016

### OBSERVATIONS OF UNRWA ON PUNITIVE DEMOLITIONS IN REFUGEE CAMPS IN THE WEST BANK, OCCUPIED PALESTINIAN TERRITORY

The following observations are provided in the context of proceedings that are pending before the Israeli High Court relating to punitive demolitions in the Kalandia Palestine refugee camp and in view of the questions that were raised in these proceedings that relate to UNRWA, its role and knowledge regarding the situation in Palestine refugee camps and the use of Palestine refugee homes within such camps. These observations are preliminary.

- UNRWA's position is that in the occupied West Bank, including East Jerusalem, punitive demolition or sealing of houses and shelters inhabited by family members of alleged perpetrators of attacks is illegal under international humanitarian and human rights law, inhumane, counterproductive and unacceptable.
- Generally speaking, houses or shelters and the related land in refugee camps in the West Bank are not owned by the Palestine refugee inhabitants who possess them. Such shelters and related land have been made available for the use of Palestine refugees pending a just and durable solution to their plight. The Agency is alarmed by the grave humanitarian impact of punitive demolitions on civilians protected under international law - particularly on children, women and persons with disabilities. These legal and humanitarian concerns, as expressed by the Agency and United Nations more broadly on multiple occasions, are a matter of public record,<sup>1</sup> and set out in numerous reports issued by the United Nations.<sup>2</sup>

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<sup>1</sup> See, e.g., UN Press Release of 16 November 2015, "Israeli punitive demolitions of Palestinian homes violates international law – senior UN relief official", available at <http://www.un.org/apps/news/story.asp?NewsID=52567#.VkpXnR3ovIU>; see also Statement of the Deputy Commissioner-General of UNRWA on the occasion of the launch of the oPt Emergency Appeal, 9 December 2014, available at <http://www.unrwa.org/newsroom/official-statements/statement-deputy-commissioner-general-unrwa-occasion-launch-opt>.

<sup>2</sup> See, e.g., Report of the United Nations High Commissioner for Human Rights, "Implementation of Human Rights Council resolutions S-9/1 and S-12/1, para. 29 – 37, UN. Doc. A/31/40.

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- The Agency notes that since the re-introduction of the measure in 2014, some 50 Palestine refugees, 29 of them children, have been displaced and rendered homeless as a result of punitive demolitions and, in one case, punitive eviction. To further illustrate the humanitarian impact of punitive demolitions, we refer to the demolition on 16 November 2015 on punitive grounds of the house of a Palestine refugee from Kalandia camp allegedly involved in an attack near Dolev settlement on 19 June 2015 that resulted in the killing of an Israeli and the injury of another Israeli. While the punitive demolition order concerned only the top floor of a three-storey building located in the refugee camp in which the family of the alleged attacker was living, the entire building was demolished with explosives. As a result, the entire building and two other neighboring structures were rendered uninhabitable, displacing 19 refugees including 7 children; only three of the refugees were immediate family members of the attacker. The demolition also damaged the homes of another 46 refugees living in adjacent buildings, including 17 children. In addition, two Palestine refugees were killed in clashes occurring during the demolition operation.
- The United Nations, including UNRWA, is seriously concerned that in the occupied West Bank the demolition of houses and shelters inhabited by family members of alleged perpetrators of crimes, or eviction of such family members, punishes others for acts they have not individually committed. Art. 33(1) of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, to which Israel is a party and which applies to occupied territories, provides that “no person may be punished for an offence he or she has not personally committed.”
- The practice of punitive demolitions in the context of occupied territory raises serious concerns also with regard to violations of other provisions of the Fourth Geneva Convention, such as the prohibition of forcible transfer under Article 49, and the prohibition of destruction of private property under Article 53. It also raises serious concerns about violations of applicable international human rights conventions to which Israel is a party, including Art. 17 of the International Covenant on International Civil and Political Rights [the right to respect of privacy, family, home and correspondence, and protection of honour and reputation] and Art. 11 of the International Covenant on Economic, Social and Cultural Rights [right to adequate housing].

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- The punitive demolition or sealing of houses or shelters in refugee camps in the West Bank raises further issues.
- Historically, Palestine refugee camps were established in response to displacement that occurred as a result of the 1948 Arab-Israeli conflict and subsequent events. As is the case of refugee camps generally, their establishment did not entail the transfer of titles to property to those taking refuge within pre-existing or new structures built on that land. Palestine refugees displaced as a result of the 1948 Arab-Israeli conflict or those Palestinians displaced as a result of the 1967 and subsequent hostilities sought refuge in shelters on land that was made available for the use of them as Palestine refugees either through UNRWA or otherwise.
- The land in the refugee camp was made available within the framework of the particular understanding of the refugee issue at the time i.e. that the camps were being set up on a temporary basis pending a just and durable solution of the refugee issue. The modalities for the use of the land by Palestine refugees differ depending on the situation of the camp and land within it. Generally, the modalities include state/public land, Waqf land, and private land that were made available by the authorities or other parties for use by Palestine refugees on the basis of rental agreements or factual possession.
- Some agreements between UNRWA and relevant host authorities, such as the 1951 Agreement between UNRWA and Jordan of 14 March 1951, include arrangements regarding the responsibilities for the provision of camp land and related financial arrangements.<sup>3</sup> Considering the particular circumstances under which the land was made available, i.e. on a temporary basis pending a just and durable solution of the refugee issue, these modalities have aimed at

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<sup>3</sup> The Agreement between UNRWA and Jordan of 14 March 1951 [1952 UNTS No. 294, at p. 282] addressed the responsibility for the provision of land for Palestine refugee camps in Jordan and areas controlled by Jordan at the time, including financial arrangements in this respect. Article IV of this agreement provides in particular that the responsibility for the provision of camp sites and of water shall rest with the Jordanian Government, while UNRWA agreed to pay a monthly sum to the Jordanian Government for all costs arising out of the rents for land occupied by refugee camps. In the 1967 Comay-Michelmore exchange of letters [1968 UNTS No. 8955, at p. 184] between UNRWA and Israel, Israel agreed to maintain the previously existing financial arrangements with the Jordanian governmental authorities then responsible for the areas in question, pending a further supplementary agreement. Such supplementary agreements have not been entered into.

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facilitating the use of land for the benefit of Palestine refugees, and are not a transfer of ownership. The Agency is not aware of instances in which these modalities included the formal transfer of property titles to Palestine refugees as opposed to the allocation of usage or possession either directly or through UNRWA.

- Concerning UNRWA's role in relation to Palestine refugee camps in the West Bank, the Agency has no formal authority over land ownership and operates within the mandate of the UN General Assembly, focusing on the provision of services to Palestine refugees. The Agency does not own, administer or police Palestine refugee camps in any of its five fields of operation. Rather, refugee camp lands were made available to UNRWA by relevant host authorities and other relevant parties (e.g. Waqf) for the benefit of Palestine refugees and to set up facilities to cater to their needs. It may be of note that there has been some practice over time whereby the Agency would document the transfer or handing-over of possession of shelters it had built or otherwise issue documents relating to the allocation and use of plots of land occupied by Palestine refugees. While the practice in this regard differs depending on the context and field, this practice is confined to (factually) documenting usage of particular plots of land and not ownership titles.
- Within the tight deadline of essentially 1 working day, the Agency has not been able to fully assess the factual and legal considerations relating to the specific circumstances of the cases pending before the Israeli High Court.

United Nations Relief and Works Agency for Palestine Refugees in the Near East  
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