

4 September 2017

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To

Prime Minister Benjamin Netanyahu, via fax 02-5605000

Minister of Defense Avigdor Lieberman, via fax 073-3233711

Minister of Justice Ayelet Shaked, via fax 02-6285438

Chief of Staff Lt. Gen. Gadi Eisenkot, via fax 03-5698299

Head of Civil Administration Brig. Gen. Achvat Ben Hur, via fax 02-9977341

**Re: Demolishing Palestinian communities and expelling their residents would constitute a war crime**

Last week, [Ha'aretz reported](#) (29 August 2017) that according to Minister Avigdor Lieberman, the defense ministry is “preparing for the evacuation of Palestinian communities built without authorization.” According to the report, “[h]e said work was being done to implement plans to evacuate the Palestinian villages of Sussia in the South Hebron Hills and Khan al-Ahmar near Ma’aleh Adumim within a few months”. As clarified in the following, should these intentions be realized, they would constitute a war crime carried out at your instruction and under your personal responsibility. This letter is sent in an attempt to stop the commission of such a crime.

Khan al-Ahmar comprises 21 families numbering 146 persons, including 85 minors. It has a mosque and a local school, which was established in 2009 and serves more than 150 children between the ages of six and fifteen – some of them from neighboring communities. Khan al-Ahmar lies on land that Israel has earmarked for expansion of the Ma’ale Adumim settlement.

Susiya comprises 32 families numbering some 200 persons, including 93 minors. It has a council structure, a clinic, a small preschool and a school for grades one through nine, which serves 55 children.

Under International Humanitarian Law, which Israel is obliged to respect in all its actions in the West Bank, all Palestinian residents of the West Bank are considered “protected persons”. This status entitles them to the protection of the occupying power, which is bound by numerous rules and restrictions that limit its actions in the occupied territory. One of these restrictions is the prohibition on forcible transfers of protected persons inside the occupied territory, or their deportation outside the occupied territory, regardless of the motive. Forcible transfer is a grave breach of the Fourth Geneva Convention and constitutes a war crime.

The prohibition on forcible transfer of protected persons is not limited to transfer by physical force. The International Criminal Tribunal for the former Yugoslavia (ICTY) expressly ruled

that in order to determine whether a forcible transfer occurred, it is sufficient to examine whether people left their homes of their own free will or as a result of pressure exerted on them or on their families. Departure due to impossible living conditions created by the authorities – through, for instance, demolishing homes or disconnecting them from electricity and running water – is considered prohibited forcible transfer.

Israel's planning policy in 60% of the West Bank, which is defined as Area C, denies Palestinian residents virtually any possibility of construction for residential purposes, prohibits connections to infrastructure and precludes public construction to match residents' needs, such as schools, medical clinics and playgrounds. It also obstructs the development of communities in Areas A and B, whose land reserves lie within Area C. This policy forces the residents to subsist on minimal means, without connections to electricity and water networks, and denies them any possibility of developing their communities to suit their current and future needs. In the absence of any other option, residents are forced to build without receiving permits from the authorities, subsequently living in constant uncertainty and fear of demolition.

In the first seven months of 2017 (January through July), Israeli authorities demolished 103 homes in the West Bank, including East Jerusalem, leaving 336 persons, 189 of them minors under the age of eighteen, homeless. Figures from the last decade reveal that the number of home demolitions reached new heights in 2016. In that year, the authorities demolished 362 homes in the West Bank, including East Jerusalem, leaving nearly 1,500 residents, about half of them minors, homeless. Throughout last year, B'Tselem documented the most massive use of demolitions since it began documenting the practice in 2004. However, the demolition of entire communities in the Occupied Territories – as indicated by the Defense Minister's public declaration of intent – is virtually unprecedented since 1967.

That is precisely the kind of reality at which the International Criminal Tribunal for the former Yugoslavia aimed its ruling. That the IDF does not intend to physically load residents onto trucks has no bearing whatsoever upon the prohibition on forcible transfer. Demolishing an entire community, leaving residents no option but to leave, would violate this prohibition. While the official Israeli guise for demolishing these Palestinian communities is “building without the necessary permits”, Israel's permit and planning policy in the West Bank renders this claim disingenuous, to say the least, and cannot be accepted.

Israeli officials have repeatedly defended the “lawfulness” of demolishing homes and expelling residents by force of military orders that have been sanctioned by all relevant legal authorities. This, too, is an unacceptable argument: For many years, Israel's planning authorities and the Supreme Court, among others, have given their seal of approval to almost all demolition orders brought before them, turning a blind eye to the unlawfulness of Israel's policy and to the consequences of its implementation. By doing so, they have enabled the expulsion of residents who have been left homeless. These decisions do not render unlawful actions legal; rather, they turn the decision-makers into accessories to a crime.

Forcible transfer is one of the offenses that come under the purview of the International Criminal Court. All persons responsible for the commission of a forcible transfer bear personal liability for the results. Among those liable for the destruction of Palestinian communities in the West Bank will be the prime minister, the defense minister, the justice minister and their

fellow ministers, as well as the chief-of-staff and other high ranking military officers, and the head of the Civil Administration, who operates under instructions by the government.

We call on you to refrain from the human rights violations that will result from demolishing these communities. We caution, yet again, that these actions would constitute a war crime committed at your instruction and under your responsibility, and for which you would bear personal liability.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hagai El-Ad', written in a cursive style.

Hagai El-Ad  
Executive Director