Legal Action on Settlements and Home Demolitions in East Jerusalem
January 2011

Background

The Palestine Legal Aid Fund is an unprecedented legal aid fund for Palestine, inspired by the successes of a similar fund during the South African anti-apartheid movement.

Our donors help give Palestinians their day in court, by enabling high impact, strategic human rights litigation to hold state and non-state actors accountable for gross human rights abuse. PLAF chooses its cases carefully, focusing on violations that have the greatest likelihood of setting legal precedents or supporting policies that advance human rights in Palestine and around the world. It not only supports active litigation but also research, investigations and helps to coordinate the development of legal and advocacy strategies around cases.

Preparations for an international legal case concerning the construction of settlements and home demolitions in East Jerusalem began in April 2010. The team’s approach is to identify the strongest legal cases and prepare a substantial case file on behalf of several applicants concerning the expropriation and/or destruction of property unlawfully and without military necessity, in violation of the Article 147 of the IV Geneva Convention.

The case file could be used in several jurisdictions in civil and criminal proceedings against at least one senior Israeli official directly responsible for home demolitions.

The cases offer the potential of both criminal and civil remedies to Palestinian residents whose property or land has been demolished or expropriated.

If successful, these cases would set an international legal precedent, by being the first cases to establish the illegality of the home demolitions in an adversarial setting.

Methodology

The legal team analyses data arriving from East Jerusalem, via the human rights organisation Al Haq, lawyers involved in local litigation and a private investigator, then applies high-level legal consideration to the quality of the evidence. The team identifies the strongest legal cases, advising Palestinian residents of their criminal and civil remedies, and prepares a substantial case file.
Outcomes

As of January 2011, the team has established a clear chronology of what has happened to the land that is either being built on or that may be built on, backed up by documentation; and has identified preliminary cases in East Jerusalem tied to specific suspects. The team has prepared a substantial case file and obtained specialist advice from counsel. The counsel’s opinion has identified recommendations for a future legal strategy, requiring further financial support to proceed.

Legal & Management Team

Mary Nazzal-Batayneh is a UK barrister, human rights academic, co-founder of the Palestine Legal Aid Fund and the Landmark Jordan Holding Group. She has vast experience campaigning for Palestinian human rights and has worked with organisations including the Anti-Apartheid Wall Campaign and Human Rights Watch. She holds degrees from Columbia University, the University of London, College of Law and the Inns of Court School of Law.

Rashad Yaqoob is a UK solicitor, Middle East investment banker, co-founder of the Human Rights Legal Aid Fund and co-founder of UK charity the City Circle. He is Director of Savills Capital Advisors (Middle East) in London.

Al-Haq is an independent Palestinian human rights organisation founded in 1979 and based in Ramallah. It has been an affiliate of the Geneva-based International Commission of Jurists for over 20 years, and has special consultative status with the United Nations. It is a member of the International Federation for Human Rights (FIDH), Habitat International Coalition, and the World Organisation Against Torture (OMCT). It is also part of the Executive Committee of the Euro-Mediterranean Human Rights Network (EMHRN) and of the Steering Committee of the Palestinian Non-Governmental Organizations Network (PNGO). Al-Haq and its counterpart, the Israeli human rights organisation B’Tselem, were co-recipients of the Carter-Menil Human Rights Prize in 1990 and of the Geuzenpenning, a Dutch human rights award in 2009.

Daniel Machover is recommended by Chambers UK Guide to the Legal Profession as a leading solicitor in civil liberties, police law, prison law and public and administrative law. In 2009 he was commended for a “first-class ability to think creatively and assimilate the facts of a case swiftly and thoroughly, with a tactical approach.” In 2010 Chambers Guide described him as “a hugely impressive figure and a talented lawyer”. His work in pursuing individuals accused of committing war crimes, torture and crimes against humanity across the world has placed him at the forefront of the movement for universal criminal jurisdiction over the most serious human rights violations. He co-founded Lawyers for Palestinian Human Rights in 1988.

James Lewis QC is specialist in civil and commercial fraud, extradition, regulatory work, public international law and judicial review matters. He appears frequently in the Privy

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Council and House of Lords as well as other foreign jurisdictions. He acts for
Prosecution, Claimant or Defendant and has sat as a part time judge since 2000.
Described in The Lawyer magazine as “very, very bright” he appears as one of the
leading nine barristers out of their ‘Hot 100’ lawyers in the United Kingdom in 2006.

Paul Troop is listed as a leading junior in Human Rights and Civil Liberties by the UK
Legal 500. Recent cases include issues of discrimination, national security, the right to
protest and universal jurisdiction. He has a number of cases currently before the
European Court of Human Rights as well as other international courts and tribunals such
as the UN Criminal Tribunal for the Former Yugoslavia and the Human Rights Advisory
Panel for Kosovo.

Salma Karmi-Ayyoub is a barrister at Tooks Chambers in the UK. She specializes in
criminal defence work and has acted in a variety of cases including for political
protestors and victims of human trafficking. She is currently working at Al Haq on cases
involving companies and individuals which are involved in human rights abuses in the
Occupied Palestinian Territories.

Belkis Wille is a paralegal currently working on preparing case files for major civil
litigation suits grounded in public international law. She has extensive experience in
human rights law including with the United Nations’ Office of the High Commissioner for
Human Rights, Al Mezan Center for Minority Rights in Gaza, Adalah Legal Center for
Minority Rights in Haifa, the Middle East Institute in Washington, Harvard Legal Aid
Bureau and Harvard Human Rights Program, the Lebanese Parliament and Harvard
Center for Middle Eastern Studies. She is a graduate of Harvard University with a BA in
Government.

Natalie Rosen is an Israeli lawyer specializing in international human rights law and
international humanitarian law. She has acted as counsel in many cases before the
Israeli Supreme Court concerning human rights violations of Palestinians in the
Occupied Palestinian Territory. Ms. Rosen holds a law degree from the College of
Management in Israel and LLM from University College London.
The Applicability of Self-Determination
And
the Issue of Palestine

By
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The self-determination of peoples is a basic principle of the United Nation Charter which has been reaffirmed in the Universal Declaration of Human Rights and applied countless times to the settlement of many international disputes. The concept played a significant part in the post-world war I settlement, leading for example to plebiscite in a number of disputed border areas, even though no reference was made to self-determination in the League of Nations Covenant.

After the Second World War, the concept began to acquire much greater importance. Article 1.2 of the Charter of the United Nations as one of the purposes of the UN reads: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”

From 1952 onwards, the General Assembly of the UN adopted a series of resolutions proclaiming the right to self-determination. The two most important of these are resolution 1514 (XV) of 14 December 1960 and resolution 2625 (XXV) of 24 October 1970.

In the 1950’s and 1960’s the right of self-determination was seen almost exclusively as part of process of decolonization. Resolution 1514 is entitled: Declaration on the Granting of Independence to Colonial Countries and Peoples.” It includes the following statement of principle: “All peoples have the right to self-determination; by virtue of that right they freely determine political status and freely pursue their economic, social and cultural development.”

The resolution 2625 of 1970, adopted a document entitled “Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States.” In a section entitled “The principle of equal rights and self-determination of peoples”, the declaration states: “By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to
pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."

In 1966, the General Assembly of the United Nations adopted the International Covenant on Civil and Political Rights (the ICCPR) and International Covenant on Economic, Social and Cultural Rights (the ICESCR). Article 1 of each of the Covenants states:

"1.1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development....

"1.3 The States Parties to the Present Covenant, including those having responsibility for the administration of Non-self-governing and Trust Territories, shall promote the realization of their right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

The Covenants came into force in 1976. They take effect as treaties and (unlike resolutions of the General Assembly) are binding, in international law on the ratifying States, subject to any reservations at the time of ratification. Israel signed the Covenants on December 19, 1966 and ratified both on October 3, 1999.

The Vienna Declaration, adopted by the UN World conference on Human Rights on 25 June 1993, repeated Article 1.1. of the Covenants and continued: "Taking into account the particular situation of peoples under colonial or other form of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the UN, to realize their inalienable right to self-determination. The World conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right."

Article 20 (1) of the African Charter on Human Rights and Peoples Rights reads: "All people shall have the right to existence, they shall have unquestionably and unalienable right to determination. They shall freely determine their political status, and shall pursue their economic and social development according to the policy they have freely chosen."

International Court of Justice considered the several resolutions on decolonization process and noted: "The subsequent development of International Law in regard to non-self governing territories as enshrined in the Charter of the UN made the principle of self-determination applicable to all of them." This opinion establishes the self-determination as the basic principle for the process of de-colonization.

The principle of self-determination in modern times can be defined as the right of peoples to determine their own political status and pursue their own economic, social and
cultural policies. Self-determination in its literal meaning or at a terminological level implies the right [of a people] to express itself to organize in whatever way it wants.

The concept seems to be as old as Government itself and was the basis of French and American revolutions. In 1916, President Wilson stated that self-determination is not a mere phrase. He said that it is an imperative principle of action and included it in the famous 14-point charter. This gave a prominence to the principle. Self-determination as conceived by Wilson was an imprecise amalgamation of several strands of thought, some long associated in his mind with the notion of “self-determination,” others hatched as a result or wartime developments, but all imbued with a general spirit of democracy.

The Atlantic Charter of 14 August 1941, which was issued by the British Prime Minister Churchill and the US President Roosevelt, affirmed the right of all people or peoples to choose their own form of Government. They further added that they wished to see the sovereign rights restored to those who had been forcibly deprived of them. Finally, in 1945 the establishment of the UN gave a new dimension to the principle of self-determination. It was made one of the objectives which the UN would seek to achieve, along with equal rights of all nations.

The principle of self-determination and the maintenance of international peace and security are inseparable. The denial of this right to self-determination to the people of Palestine has brought all neighboring countries in the Middle East to the brink of catastrophe.

Although, the applicability of the principle of the self-determination to the specific case of Palestine has been explicitly recognized by the United Nations. It was upheld equally by Security Council when the Palestine dispute was brought before the Security Council in 1948. The agreement is embodied in the resolutions # 181 II of 1947, # 42 of 1948, # 44 of 1948, # 3236 of 1974 of the United Nations General Assembly; and resolutions # 242 of 1967 & # 338 of 1973 of the United Nations Security Council and many scores of other resolutions. It is binding on all parties and no allegation of non-performance of any of its provisions by either side can render it inoperative.

The United Nations General Assembly resolution # 3236 of 1974 ‘reaffirms the inalienable rights of the Palestinian people in Palestine, including:

(a). The right to self-determination without external interference;

(b) The right to national independence and sovereignty;

and ‘reaffirms also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return’;

and also ‘recognizes that the Palestinian people is a principal party in the establishment of a just and lasting peace in the Middle East.’
In the first place, the commonsense appeal and justice of the idea is undeniable. There is no way the dispute of Palestine can be settled once and for all except in harmony with the people's will, and there is no way the people's will can be ascertained except through an impartial vote.

Secondly, there are no insuperable obstacles to the setting up of a stage for the settlement of the question of Palestine under the aegis of the United Nations. The world organization has proved its ability, even in the most forbidding circumstances, to institute an electoral process under its supervision and control and with the help of a neutral peace-keeping force. The striking example of this is Namibia, which was peacefully brought to independence after seven decades of occupation and control by South Africa. East Timor also became independent only through the involvement of the United Nations.

The question arises: what should be the point of departure for determining a just and lasting basis for the question of Palestine? The answer obviously is (a) the Charter of the United Nations which, in its very first article, speaks of "respect for the principles of equal rights and self-determination of peoples" and (b) the international agreements between the parties to the dispute.

Therefore, a sincere and serious effort towards a just settlement of the Palestine dispute must squarely deal with the realities of the situation and fully respond to the people's rights involved in it. A peace process mounted on a fragile platform is bound to collapse. Indeed, any process that ignores the wishes of the people of Palestine and is designed to sidetrack the United Nations will not only prove to be an exercise in futility but can also cause incalculable human and political damage.

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